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Vol. II
TRANSCRIPT OF RECORD

(Pages 369 to 896)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 278

RECONSTRUCTION FINANCE CORPORATION, INSURANCE GROUP COMMITTEE, CENTRAL HANOVER BANK AND TRUST COMPANY, PETITIONERS,

vs.

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, ET AL.

No. 279

RECONSTRUCTION FINANCE CORPORATION, INSURANCE GROUP COMMITTEE, CENTRAL HANOVER BANK AND TRUST COMPANY, PETITIONERS,

vs.

THE DENVER AND SALT LAKE WESTERN RAILROAD COMPANY, ET AL.

No. 280

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vs.

GUY A. THOMPSON, TRUSTEE, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 30, 1945.

CERTIORARI GRANTED OCTOBER 8, 1945.

SUPREME COURT OF THE UNITED STATES

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VOL. II

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[fol. 369] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO

No. 8669

In the Matter of THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, Debtor

PETITION

To the Honorable the Judges of the District Court of the United States for the District of Colorado:

The petition of The Denver and Rio Grande Western Railroad Company, a railroad corporation organized and existing under the laws of the State of Delaware, hereinafter referred to as the "Debtor", respectfully represents:

First. That the Debtor is a railroad corporation duly organized and existing under the laws of the State of Delaware, and a citizen and resident of said State of Delaware; and is a common carrier by railroad engaged in the transportation of persons and property in interstate commerce in the States of Colorado, Utah and New Mexico, [fol. 370] and owning and operating such railroad in said states, and is not a street, suburban or interurban electric railway; and that during the six months' period immediately preceding the filing of this petition the Debtor has had, and now has, its principal executive and operating office in the City of Denver, Colorado, in the District of Colorado.

Second. That the Debtor attaches hereto as "Exhibit A" and makes a part hereof, a statement of certain of its debts now due and payable, or presently and up to and including January 1, 1936, to become due and payable.

That the Debtor is without funds to pay and discharge said obligations set forth in Exhibit A hereto, as they mature and on information and belief alleges that it has no means of borrowing or otherwise procuring funds for such purposes; that it is unable to meet its debts as they mature and it desires to effect a plan of reorganization pursuant to Section 77, of Chapter VIII of the Acts of Congress relating to bankruptcy, and especially as amended by an Act entitled "An Act To amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto"; approved August 27, 1935.

Third. That a copy of this petition is being filed with the Interstate Commerce Commission concurrently with the filing of this petition in this court.

Fourth. That the filing of this petition by the Debtor [fols. 371-372] was duly authorized by a resolution of its Board of Directors adopted at a meeting thereof duly held on the 30th day of October, 1935.

Wherefore, your petitioner prays that an order may be entered approving this petition as properly filed under said Section 77, and that it be granted all other and further relief to which it may be entitled.

The Denver and Rio Grande Western Railroad Company, By J. S. Pyeatt, Its President.

Henry McAllister, 420 Equitable Building, Denver, Colorado. Pierce & Greer, 35 Wall Street, New York City, New York, Attorneys for Debtor.

Duly sworn to by J. S. Pyeatt, jurat omitted in printing.

[fol. 373] EXHIBIT "A"

To

Petition of the Denver and Rio Grande Western Railroad Company (The Debtor)

Statement of certain of its debts now due and payable, or presently and up to and including January 1, 1936, to become due and payable showing the character of the obligations, their respective due dates and amounts (approximate)

Due Date	Character of Obligations	Amount
	Overdue Interest on Funded Debt	
Aug. 1, 1933	Balance due coupon account for Interest on Denver & Rio Grande Western Railroad Co. 5% General Mortgage Bonds	$120,200
Jan. 1, 1935	Interest on Rio Grande Western Railway Co. First Trust Mortgage 4% Bonds	56,500
" "	Interest on Denver & Rio Grande Railroad Co. Consolidated Mortgage 4 and 4½% Bonds	826,095
April 1, 1935	Interest on Rio Grande Western Railway Co. Consolidated Mortgage 4% Bonds	301,600
" "	Interest on Denver & Rio Grande Western Railroad Co. Refunding & Improvement Mortgage 5 and 6% Bonds	360,000
July 1, 1935	Interest on Denver and Rio Grande Railroad Co. 1st Consolidated Mortgage 4 and 4½% Bonds	826,095
" "	Interest on Rio Grande Western Railway Co. 1st Trust Mortgage 4% Bonds	303,800
Aug. 1, 1935	Interest on Denver & Rio Grande Western Railroad Co. General Mortgage 5% Bonds	745,200
Oct. 1, 1935	Interest on Rio Grande Western Railway Co. 1st Consolidated Mortgage 4% Bonds	301,600
" " "	Interest on Denver & Rio Grande Western Railroad Co. Refunding & Improvement Mortgage 5 and 6% Bonds	360,000
	Total Overdue Interest	$4,201,090

[fol. 374]

Interest on Funded Debt payable on or after November 1, 1935, to and including January 1, 1936		
Nov. 1, 1935	Interest on Denver & Rio Grande Western Railroad Co. Equipment Trust, Series "C," 4½'s	$16,537
Dec. 31, 1935	Interest on The Rio Grande Junction Railway Co. First Mortgage 5% Bonds (Rental leased line)	50,000
Dec. 31, 1935	Deferred interest (due 2/1/34, 8/1/34 and 2/1/35) on Denver & Rio Western Railroad Co. General Mortgage 5% Bonds (extended by agreement)	1,863,000
Jan. 1, 1936	Interest on Denver & Rio Grande Railroad Co Consolidated Mortgage 4 and 4½% Bonds	826,095
" "	Interest on Rio Grande Western Railway Co. 1st Trust Mortgage 4% Bonds	303,800
	Total interest payable November 1, 1935—January 1, 1936	$3,059,432
Principal of notes or funded debt or sinking fund payment now due or to become due by January 1, 1936		
Mar. 31, 1934	Note payable to Railroad Credit Corporation, dated June 1, 1932	$382,646
Mar. 29, 1935	Three notes payable to Reconstruction Finance Corporation	2,000,000
On Demand	Notes payable to Reconstruction Finance Corporation, dated April 25, and June 30, 1933	1,950,000
On Demand	Note held by Reconstruction Finance Corporation, account purchase D. & S. L. Ry. stock	3,110,850
On Demand	Note payable to Chase National Bank of New York	1,500,000
On Demand	Note held by Western Pacific R. R. Corp.	17,500
On Demand	Note held by Missouri Pacific R. R. Co.	17,500
Dec. 31, 1935	Sinking fund payment under Denver & Rio Grande Western Railroad Co. Refunding & Improvement Mortgage	163,000
Jan. 1, 1936	Principal of Denver & Rio Grande Railroad Co. 1st Consolidated Mortgage 4 and 4½% Bonds,	
	In hands of public $40,507,000	
	Pledged 1445000	$41,952,000
	Total Principal	$51,093,496

[fols. 375-378]

Summary

Overdue interest on funded debt	$4,201,090
Interest on same, payable November 1, 1935-January 1, 1936	3,059,432
Principal of notes and funded debt and sinking fund payment now due or to become due by January 1, 1936	51,093,496
Total	$58,354,018

Filed November 1, 1935, 4 P. M. Charles W. Bishop, Clerk.

[fols. 377-378] IN UNITED STATES DISTRICT COURT

STATEMENT OF ASSETS AND LIABILITIES OF DEBTOR AS OF CLOSE OF BUSINESS ON OCTOBER 31, 1935

Pursuant to paragraph (6) of Order No. 1, entered herein on November 1, 1935, the Debtor The Denver and Rio Grande Western Railroad Company, files herewith a statement of its assets and liabilities as of the close of business on October 31, 1935; certified as correct by the chief accounting officer of said Debtor, namely, its General Auditor.

The Denver and Rio Grande Western Railroad Company, by Henry McAllister, Its Attorney.

[fol. 379]

The Denver and Rio Grande Western Railroad Company General Balance Sheet Statement
As of October 31, 1935

Assets

		Total Book Assets	Company's Own Issues	
Investments:				
701	Investment in Road and Equipment		210,584,177 90	
702	Improvements on Leased Railway Property		559,635 63	
704	Deposits in Lieu of Mortgaged Property Sold		37,874 64	
705	Miscellaneous Physical Property		154,871 10	
706	Investments in Affiliated Companies—Pledged		14,911,368 46	
706	Investments in Affiliated Companies—Unpledged		614,524 90	
707	Other Investments		34 00	226,862,485 73
Current Assets:				
708	Cash		1,145,373 76	
711	Special Deposits		129,186 31	
712	Loans and Bills Receivable		81,240 00	
713	Traffic and Car Service Balances Receivable		162,035 84	
714	Net Balance Receivable from Agents and Conductors		115,796 13	
715	Miscellaneous Accounts Receivable		1,492,880 32	
716	Material and Supplies		2,440,179 97	
717	Interest and Dividends		48,943 88	
718	Rents Receivable		114,029 92	
719	Other Current Assets		6,510 61	5,736,176 74

[fol. 380]

Deferred Assets:				
720 Working Fund Advances			8,464.30	
722 Other Deferred Assets			161,407.84	169,872.14
Unadjusted Debits:				
723 Rents and Insurance Premiums Paid in Advance			9,355.28	
727 Other Unadjusted Debits			7,182,321.38	7,191,676.66
729 Securities Issued or Assumed—				
Pledged (Held for Incineration)	8,333,000.00	8,333,000.00		
Pledged (Held as Collateral)	13,331,000.00	13,331,000.00		
	21,664,000.00	21,664,000.00		239,900,211.27

Liabilities

	Book Liability	Portion held by or for Company		
Stock:				
751 Capital Stock:				
Common	62,457,539.62		62,457,539.62	
Preferred	16,430,000.00		16,430,000.00	
752 Stock Liability for Conversion	15,600.00		15,600.00	
Total	78,903,139.62		78,903,139.62	
Long Term Debt:				
755 Funded Debt Unmatured	135,872,000.00	13,331,000.00	122,541,000.00	
Total Capital Liabilities	214,775,139.62	13,331,000.00	201,444,139.62	201,444,139.62
754 Grants in Aid of Construction				800,312.79

[fol. 381]

Current Liabilities:			
758 Loans and Bills Payable		6,975,714.69	
759 Traffic and Car Service Balances Payable		721,496.47	
760 Audited Accounts and Wages Payable		7,047,348.12	
761 Miscellaneous Accounts Payable		17,385.86	
762 Interest Matured Unpaid		6,180,705.00	
764 Funded Debt Matured Unpaid	8,333,000.00	3,000.00	
766 Unmatured Interest Accrued		1,397,610.23	
767 Unmatured Rents Accrued		242,574.62	
768 Other Current Liabilities		24,910.35	22,610,745.34
Deferred Liabilities:			
770 Other Deferred Liabilities			358,127.34
Unadjusted Credits:			
771 Tax Liability		951,636.31	
776 Accrued Depreciation—Equipment		9,937,985.49	
778 Other Unadjusted Credits		1,711,460.86	12,601,082.66
Corporate Surplus:			
779 Additions to Property thru Income and Surplus		407,136.88	
784 Profit and Loss		1,738,666.64	
Total Corporate Surplus			2,145,803.52
			239,960,211.27

Certified as correct, this 23rd day of December, 1935.

J. F. Morris,
General Auditor, The Denver and Rio Grande Western Railroad Company.

Field Dec. 23, 1935, 11:15 A. M. Charles W. Bishop, Clerk.

[fol. 382] IN UNITED STATES DISTRICT COURT

PETITION FOR INTERVENTION AND FOR IMPOUNDING OF INCOME OF THE DEBTOR RAILROAD COMPANY, BY CITY BANK FARMERS TRUST COMPANY, AS TRUSTEE UNDER THE GENERAL MORTGAGE DATED FEBRUARY 1, 1924, OF THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY.

To the Honorable the Judges of the District Court of the United States for the District of Colorado:

The petition of City Bank Farmers Trust Company, as trustee under the mortgage and deed of trust of The Denver and Rio Grande Western Railroad Company, dated as of [fol. 383] February 1, 1924, respectfully shows as follows:

1. The petitioner, City Bank Farmers Trust Company, at all times hereinafter mentioned was, and still is, a corporation duly organized and existing under the laws of the State of New York and a citizen of said state having its principal office and residence in the City, County and State of New York and the Southern District of New York, and as such corporation at all times hereinafter mentioned was, and still is, duly authorized and empowered to hold in trust the property conveyed, transferred and assigned to it upon the trusts hereinafter stated, and to execute and perform the trusts reposed in it under and by virtue of the mortgage and deed of trust, dated as of February 1, 1924, (hereinafter called the "General Mortgage").

2. Upon information and belief, the debtor, The Denver and Rio Grande Western Railroad Company (hereinafter called the "Railroad Company"), is a corporation duly organized and existing under the laws of the State of Delaware and is a citizen and resident of said state, and owns or leases and, prior to the filing of its petition in this Court under Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, as hereinafter shown, operated as a common carrier by railroad, lines of railroad, substantially all continuous and connecting; and forming a complete railroad system lying within the States of Colorado, Utah and New Mexico; and its principal executive and [fol. 384] operating office is in the City of Denver, Colorado, in the District of Colorado.

3. Upon information and belief, the Railroad Company, in pursuance of resolutions adopted by the affirmative vote of more than two-thirds of its entire Board of Directors, and of resolutions adopted by the affirmative vote of the holders of its entire capital stock outstanding, at meetings duly called and held in accordance with law and with the by-laws of the Railroad Company, determined, for the purposes set forth in the General Mortgage hereinabove and hereafter referred to, to create and issue, in the manner and form as provided by such General Mortgage, its Bonds limited to an aggregate principal amount of Twenty-nine million eight hundred eight thousand dollars ($29,808,000), at any one time outstanding, to be known as the General Mortgage Sinking Fund Gold Bonds of the Railroad Company (hereinafter called the "Bonds").

4. Upon information and belief, the Railroad Company, in pursuance of resolutions adopted by the affirmative vote of more than two-thirds of its entire Board of Directors, and of resolutions adopted by the affirmative vote of the holders of its entire capital stock outstanding, at meetings duly called and held in accordance with law and with the by-laws of the Railroad Company, in order to secure the payment of all the Bonds at any time issued and outstanding under such General Mortgage, according to their tenor, purport and effect, as well the interest as the principal [fol. 385] thereof, and to secure the performance and observance of all the covenants and conditions therein and in said General Mortgage contained, and to declare the terms and conditions upon which the Bonds were to be issued, determined to and did duly make, and on or about December 20, 1924, execute under its corporate seal and deliver to the petitioner, City Bank Farmers Trust Company, as trustee, a mortgage and deed of trust dated as of February 1, 1924. The petitioner prays leave to refer to the General Mortgage, or to a copy thereof when the same shall be produced upon the final hearing, or upon any hearing in this proceeding, with the same force and effect as if said General Mortgage were herein set forth at length.

5. In and by the General Mortgage, the Railroad Company, for the purposes and on the conditions therein set forth, granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over unto the trustee, its successors in the trust and its and their as-

[fol. 395] each and all of said Bonds and Scrip Certificates were duly delivered to the Railroad Company or upon its order pursuant to the terms of the General Mortgage. Upon information and belief all of said Bonds and Scrip Certificates therefor were duly issued and, with their appurtenant unpaid coupons, now are outstanding and now are the lawfully created, valid and existing obligations of the Railroad Company and entitled to the lien and security of the General Mortgage and are in the hands of numerous bona fide holders for value.

15. Section 3 of Article Nine of the General Mortgage provides, among other things, as follows (the "Railroad Company" therein mentioned being the debtor Railroad Company, the "indenture" therein mentioned being the General Mortgage, and the "Trustee" therein mentioned being the petitioner):

"Section 3. Unless and until

"A. * * * ; or

"B. there shall be a default in the payment of some installment of interest on some General Mortgage Bond at the time outstanding; or

"C. some one of the events of default specified in subdivisions (b), (c), (d), (e), (f), (g) or (h) of Section 2 of Article Ten hereof shall happen:

(a) the Trustee shall not (except with the assent of the Railroad Company or as otherwise author- [fol. 396]- ized by this indenture), whether at, or before, or after the maturity thereof, be entitled to enforce the collection of, the principal or interest of any bonds or obligations or of any other claims or indebtedness subject to this indenture, and shall not enforce any provisions of the mortgages, trust deeds or other instruments under which such bonds or other obligations were issued, or by which the same are secured; * * *."

The General Mortgage, in Article Ten thereof, provides, among other things, as follows (the "Railroad Company" therein mentioned being the debtor Railroad Company, the

"indenture" therein mentioned being the General Mortgage, and the "Trustee" therein mentioned being the petitioner):

"Section 2. If one or more of the following events, in this indenture called events of default, shall happen, that is to say:

(a) default shall be made in the payment of any instalment of interest on any of the General Mortgage Bonds when and as the same shall become payable, as therein and herein expressed, and such default shall continue for ninety days; or"

* * * * * * *

(c) default shall be made in the payment of any instalment of the sinking fund created for the General Mortgage Bonds by Article Five hereof, [fol. 397] and such default shall continue for one hundred and twenty days; or

(d) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Railroad Company, its successors or assigns, in the General Mortgage Bonds or in this indenture contained, and such default shall continue for one hundred and twenty days after written notice specifying such default and requiring the same to be remedied shall have been given by the Trustee, which shall give such notice, on the written request of the holders of twenty per cent in principal amount of the General Mortgage Bonds at the time outstanding; or

(e) an order shall be ~~made for~~ the appointment pendente lite of a receiver (but not a temporary receiver) of the Railroad Company or of the trust estate substantially as a whole; or

(f) default shall be made in the payment of the interest on any bond or obligation secured by direct lien prior to that of this indenture on the mortgaged lines of railway or any part thereof and such default shall continue for the period of grace, if any, specified in the mortgage or other instrument securing such bond or obligation; or

signs, all the right, title and interest of the Railroad Company in and to all and singular the lines of railroad, and all property and rights held for use in connection therewith, or appertaining thereto, extensions, additions, improvements and betterments, other properties and franchises, shares of capital stock and bonds, "all tolls, revenues, earnings, income, rents, issues and profits of the railways, premises and property and every part thereof" described therein. In the General Mortgage it was provided that the properties [fol. 386] were assigned and conveyed subject to certain liens therein more particularly described.

6. In addition to the property described in the granting clauses of the General Mortgage, provision is made in Article Seven thereof with respect to stock of the Utah Fuel Company as follows (the "Railroad Company" therein mentioned being the debtor Railroad Company, "indenture" therein mentioned being the General Mortgage, the "Trustee" therein mentioned being the petitioner and the "Refunding and Improvement Mortgage" therein mentioned being a certain mortgage and deed of trust executed by the Railroad Company, dated as of February 1, 1924 and constituting a lien on the property therein described prior to that of the General Mortgage):

"Section 1. Simultaneously with the execution hereof there has been executed an agreement between the Railroad Company, Missouri Pacific Railroad Company, The Western Pacific Railroad Corporation and James S. Alexander, Trustee, relating to the stock of Utah Fuel Company, (hereinafter sometimes called the Utah Fuel Agreement), and an assignment of its rights and interests under said agreement by the Railroad Company to the trustee under the Refunding and Improvement Mortgage, and, subject thereto, to the Trustee hereunder. By the Utah Fuel Agreement and the assignment thereof it is, among other things, [fol. 387] provided that in the event of the foreclosure or enforcement hereof pursuant to the provisions of Article Ten hereof, the Trustee hereunder, or the Preferred Stockholders Committee in said agreement referred to, shall have the power to require the sale by the trustee under said agreement of the stock of Utah Fuel Company, the subject of said agreement (or any securities or other property held subject to said agree-

ment for which such stock may have been exchanged pursuant to the terms of said agreement) and the application of the proceeds to the payment of the Refunding Bonds and thereafter the bonds issued hereunder in the same manner as if such stock (or substituted securities or property as in said agreement provided) had been pledged under the Refunding and Improvement Mortgage and subject thereto, hereunder, (subject to the existing charge, if any, upon said stock in favor of the First Consolidated Mortgage 4% Fifty Year Gold Bonds of The Rio Grande Western Railway Company, secured by the First Consolidated Mortgage Deed of said Railway Company to The State Trust Company, Trustee [Guaranty Trust Company, of New York, successor trustee], herein sometimes called the First Consolidated Mortgage, dated April 1, 1899, and any indentures supplemental thereto) and if the Trustee hereunder or said Preferred Stockholders Committee shall so request, before the application to the payment of the Refunding Bonds or the bonds [fol. 388] issued hereunder, of the properties subject to this indenture, or the proceeds thereof.

"In the event that said stock (or substituted securities or other property), shall be so sold at the instance of the trustee under the Refunding and Improvement Mortgage or the Trustee hereunder or said Preferred Stockholders Committee, and the proceeds thereof shall be subject to be applied in whole or in part to the payment of the bonds issued hereunder and/or the interest accrued thereon, either under the direction of any court having jurisdiction of the foreclosure or enforcement of this indenture or otherwise, said proceeds shall be applied to the payment of said bonds and/or the interest thereon in the same manner, in the same order of priority and with the same effect as if said stock or substituted securities or other property until the sale thereof at all times had been a part of the securities subject hereto and had been so sold."

The petitioner prays leave to refer to said Utah Fuel Agreement and to said assignment, or to copies thereof when the same shall be produced upon the final hearing, or upon any hearing in this proceeding, with the same force

and effect as if said Utah Fuel Agreement and said assignment were herein set forth at length.

7. In addition to the provisions with respect thereto found in the granting clauses of the General Mortgage, the [fol. 389] tolls, revenues, earnings, income, rents, issues and profits of the mortgaged property were specifically and primarily pledged in Section 1 of Article Fifteen to the payment of the principal and interest of the Bonds, as follows (the "Railroad Company" therein mentioned being the debtor Railroad Company, the "indenture" therein mentioned being the General Mortgage, and the "Trustee" therein mentioned being the petitioner):

"Section 1. Until some default shall have been made in the due and punctual payment of the interest or of the principal of the General Mortgage Bonds at any time outstanding, or of some part of such interest or principal, or until some one or more of the events of default specified in clauses (c), (d), (e), (f), (g) and (h) of Section 2 of Article Ten hereof shall have happened, the Railroad Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the property subject to this indenture (other than bonds, certificates of stock, cash and other property assigned or pledged, or to be assigned or pledged, hereunder), and to manage, operate and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the tolls, earnings, income, rents, issues and profits of such property (as well as of such stock, bonds, cash and other property so assigned or pledged).

"The Railroad Company covenants and agrees that from such income, after payment of the operating and [fol. 390] maintenance expenses of the mortgaged premises embraced in the trust estate, taxes and other proper prior charges, the interest maturing upon the General Mortgage Bonds, so far as such income shall not be applied to the payment of the interest maturing on other bonds or obligations secured by mortgage or other instrument prior in lien to this indenture upon the trust estate, shall, subject to the provisions of Article Six hereof, first be paid, and such income

whether before or after the happening of an event of default and whether the mortgaged premises be operated by the Railroad Company or by the Trustee under any power reserved under this indenture, or by a receiver or receivers appointed by any court at the instance of the Railroad Company or of the Trustee or of any mortgagee, stockholder, creditor or other person interested in the Railroad Company and having the right to apply for such appointment, shall be primarily pledged and applied, subject only as otherwise in this indenture specifically provided, to the payment of the principal and interest of the General Mortgage Bonds."

8. It is provided in the General Mortgage that all of the properties assigned and conveyed to the petitioner were so assigned and conveyed for the common and equal use, benefit and security of all and singular the person or persons, firm or firms, bodies politic or corporate, who should from time [fol. 391] to time be holders of any of the Bonds or coupons and without preference of any of said Bonds over any other or others of said Bonds by reason of priority in the time of issue or negotiation thereof or otherwise howsoever.

9. Section 14 of Article Eight of the General Mortgage provides as follows (the "Railroad Company" therein mentioned being the debtor Railroad Company, "indenture" therein mentioned being the General Mortgage, the "Trustee" therein mentioned being the petitioner and the "Refunding and Improvement Mortgage" therein mentioned being a certain mortgage and deed of trust executed by the Railroad Company, dated as of February 1, 1924 and constituting a lien on the property therein described prior to that of the General Mortgage):

"Section 14. At all times the Railroad Company will keep on its books a separate list of locomotives, tenders, cars and other equipment subject to this indenture as a direct first lien or subject to the Refunding and Improvement Mortgage as a direct first lien, and prior to January 1, 1926, it will furnish to the Trustee a complete list of all such locomotives, tenders, cars and other equipment on which this indenture or the Refundin and Improvement Mortgage shall then be a direct st lien, and thereafter it will annually prior to

every January 1, and at such additional times as the Trustee may request, furnish to the Trustee a corrected [fol. 392] list thereof, so as to enable the Trustee at all times, to identify the locomotives, tenders, cars and other equipment upon which this indenture or the Refunding and Improvement Mortgage is a direct first lien."

10. The petitioner duly accepted the trusts created by the General Mortgage and executed the same to evidence such acceptance.

11. Upon information and belief, since the date of the execution and delivery of the General Mortgage, the Railroad Company has from time to time acquired certain other property, real and personal, rights and interest (the exact character, description and extent of which are at present unknown to the petitioner), which have become subject to the lien of the General Mortgage, and for the proper protection and enforcement of the rights of the petitioner and of the holders of the Bonds and interest obligations, it is necessary for the Railroad Company and any trustees appointed under Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, to account to the petitioner in this proceeding for all property, rights and interests owned by the Railroad Company at the date of the execution and delivery of the General Mortgage, and for all property, rights and interests subsequently acquired by the Railroad Company; and for certain property released from the lien of the General Mortgage, and to exhibit in this proceeding a full and true description thereof, in order that said property, rights and interests or so much thereof as [fol. 393] is subject to the lien of the General Mortgage, may be so declared and decreed by this Court.

12. Upon information and belief, subsequent to the execution and delivery of the General Mortgage, the same was duly recorded in each county in which the lines of railroad and other property of the Railroad Company covered by the General Mortgage were and are situated or located, and elsewhere as required by law, except that the General Mortgage was not recorded in the Counties of Jefferson and Park in the State of Colorado nor in the Counties of Garfield, Duchesne and Uintah in the State of Utah where certain rights of way which had been acquired by the Rail-

road Company were not used or intended for railroad purposes.

13. Upon information and belief, the General Mortgage and the assignment of the Railroad Company's rights and interests under the Utah Fuel Agreement were and are the proper act and deed of the Railroad Company, and were by it authorized, made and delivered in all respects in conformity with law, and the same were and are valid conveyances for the purposes therein stated and now constitute valid and subsisting liens upon all the property therein mentioned and set forth and covered by or embraced in or under the General Mortgage and said assignment, or intended so to be, or which has become subject to the lien of the General Mortgage and said assignment.

[fol. 394] 14. By Article Two of the General Mortgage it is, among other things, provided that Twenty-nine million eight hundred eight thousand dollars ($29,808,000) principal amount of Bonds, should, forthwith upon the execution and delivery of the General Mortgage, or at the option of the Railroad Company at any time or from time to time thereafter, be executed by the Railroad Company and delivered by it for authentication to the petitioner, and that thereupon, as provided therein, the petitioner should authenticate and deliver the same. From time to time the petitioner, in conformity with the provisions of the General Mortgage has duly authenticated Twenty-nine million seven hundred forty-nine thousand and seven hundred dollars ($29,749,700) principal amount of Bonds in definitive form, Forty-three thousand five hundred dollars ($43,500) principal amount of Bonds in temporary form, and Fourteen thousand eight hundred dollars ($14,800) principal amount of Scrip Certificates for Bonds. Some of the foregoing Bonds were in form of coupon bonds and some were in form of registered bonds, but all of such Bonds and all of such Scrip Certificates were in the forms, respectively, provided in the General Mortgage and as prescribed, upon information and belief, in resolutions duly adopted by the Board of Directors of the Railroad Company as provided in the General Mortgage; and upon information and belief all of such Bonds and Scrip Certificates for Bonds had been theretofore duly executed by the Railroad Company pursuant to authority of law and due corporate action, and thereupon

[fol. 398] (g) the Railroad Company shall fail, on the maturity of said bonds or obligations specified in the foregoing clause (f) of this Section 2 (or if the time for the payment of the principal of any of said bonds or obligations shall have been extended pursuant to the right reserved in Section 7 of Article Eight hereof, on such extended maturity) and on presentation thereof in accordance with the terms thereof, either to pay said bonds or obligations or to cause said bonds or obligations to be taken up and delivered to the Trustee to be held under this indenture or otherwise to deal with such bonds or obligations as may be required or permitted by this indenture; or

(h) default shall be made in the performance of any covenant contained in any mortgage or deed of trust or other instrument constituting a direct lien on any part of the mortgaged lines of railway in priority to this indenture and, by reason of such default, any right of entry or right of action for the enforcement of the security afforded thereby shall accrue;

then and in each and every such case the Trustee personally, or by its agents or attorneys, while such default shall continue, may enter into and upon all or any part of the railways, rolling stock, property and premises, lands, rights, interests and franchises hereby [fol. 399] conveyed, or intended so to be, and each and every part thereof, and may exclude the Railroad Company, its agents and servants wholly therefrom; and, having and holding the same, may use, operate, manage and control said railways and other premises, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by its superintendents, managers, receivers, agents and servants or attorneys; * * *. And the Trustee shall be entitled to collect and receive all tolls, earnings, income, rents, issues and profits of the same and every part thereof, and also the income from stocks and bonds and other obligations and securities subject to this indenture."

* * * * * * *

"Section 3. If one or more of the events specified in Clauses A, B or C of Section 3 of Article Nine hereof shall happen, the Trustee shall be entitled, while such event shall continue, to vote on all shares of stock then held under this indenture, and, for the benefit of the holders of the General Mortgage Bonds, to collect and receive all dividends on all such shares of stock, and all sums payable for principal, interest or otherwise upon any bonds or obligations or other indebtedness that shall then be pledged under this indenture, and to apply, as hereinbefore in Section 2 of this Article Ten provided, the net moneys received; and, [fol. 400] as holder of any such shares of stock and of any such bonds or other obligations and such indebtedness, to perform any and all acts, or to make or execute any and all transfers, requests, requisitions or other instruments for the purpose of carrying out the provisions of this Section 3; but in the event that a receiver of the railways embraced in the trust estate shall have been appointed and shall be in possession thereof in the enforcement of this indenture or pursuant to the provisions hereof, the Trustee from time to time in its discretion may, and if requested by the holders of a majority in principal amount of the General Mortgage Bonds at the time outstanding, shall turn over any part or all of the interest moneys and dividends so collected by it to such receiver, and the Trustee may co-operate with such receiver in managing and operating the system of the Railroad Company in such manner as the Trustee shall deem for the best interest of the holders of the General Mortgage Bonds."

* * * * * * *

"Section 17. Upon filing a bill in equity, or upon commencement of any other judicial proceedings, to enforce any right of the Trustee or of the bond-holders under this indenture, the Trustee shall be entitled, as matter of right, to the appointment of a receiver of the premises and property subject to this indenture, and of any other property owned by the Railroad Com- [fol. 401] pany, used for, in or about, or the use and possession whereof is essential to, the operation of the lines of railway and railway properties subject to this indenture or any thereof, and of the earnings,

income, revenues, rents, issues and profits of the premises and property subject hereto with such powers as the court making such appointment shall confer; but notwithstanding the appointment of any receiver, the Trustee shall be entitled, as pledgee, to continue to retain possession and control of any shares of stock, bonds, cash and other property pledged or to be pledged, and held hereunder, and to retain control of any moneys deposited with other depositaries as in this indenture provided."

"Section 18. In case the Railroad Company shall make default in any of the respects mentioned in Section 2 of this Article Ten, and (1) at any time during the continuance of such default there shall be any existing judgment against the Railroad Company unsatisfied and unsecured by bond on appeal or (2) in any judicial proceeding by any party other than the Trustee, a receiver shall be appointed of the Railroad Company or of its property or any part thereof, or a judgment or order be entered for the sequestration of its property or any part thereof; or in case the Railroad Company shall make default in the payment of interest specified in subdivision (a) of said Section 2, and shall by resolution of its Board of Directors admit to the Trustee its inability to make good such de- [fol. 402] fault within the period of grace in said subdivision (a) mentioned; the Trustee, in either such case, without waiting the period of grace, if any, in said Section 2 specified in respect of such default, shall thereupon be entitled, in the discretion of the Trustee, forthwith to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred and provided to be exercised by the Trustee upon the happening of an event of default as hereinbefore provided, and as matter of right the Trustee shall thereupon be entitled, in the discretion of the Trustee, to the appointment of a receiver of the trust estate, and of the earnings, income, revenue, rents, issues and profits thereof, and of any other property of the Railroad Company used for, in or about, or the use or possession whereof shall be essential to, the operation of the lines of railway and railway properties subject hereto or any thereof, with such powers

as the court making such appointment shall confer; *provided*, however, that notwithstanding the appointment of any such receiver, the Trustee shall be entitled as pledgee, to continue to retain possession and control of any shares of stock, bonds, cash and other property pledged or to be pledged, and held hereunder, and to retain control of any moneys deposited with other depositaries as in this indenture provided."

[fol. 403] 16. Upon information and belief, heretofore and on or about November 1, 1935, the Railroad Company filed in this Court its petition as debtor under Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, which petition represented, among other things, that the Railroad Company was duly organized and existing under the laws of the State of Delaware, and a common carrier by railroad engaged in the transportation of persons and property in interstate commerce, in the States of Colorado, Utah and New Mexico; that on the date of the petition (October 30, 1935) certain of its debts were then due and payable, or presently and up to and including January 1, 1936, would become due and payable all as set forth in a statement attached to the petition of the Railroad Company; and the Railroad Company alleged upon information and belief that it would be unable to procure funds with which to pay and discharge such obligations as they became due and payable; that the Railroad Company was unable to meet its debts as they matured and desired to effect a plan of reorganization pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, and especially as amended by an Act entitled "An Act to Amend an Act entitled 'An Act to Establish a Uniform System of Bankruptcy throughout the United States', approved July 1, 1898, and Acts Amendatory thereof and Supplementary thereto", approved August 27, 1935; that the Railroad Company was, concurrently with the filing of said petition [fol. 404] in this Court, causing to be filed with the Interstate Commerce Commission a copy of the petition; that the filing of said petition was duly authorized by a resolution of the Board of Directors of the Railroad Company adopted at a meeting thereof held on October 30, 1935. The said petition prayed that an order might be entered approving the petition as properly filed under said Section

77, and that it be granted all other and further relief to which it might be entitled.

17. Upon information and belief, upon the filing of said petition by the Railroad Company and on or about November 1, 1935, an order was made and entered by this Court, which order, among other things, directed that the petition be approved as properly filed under Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, and authorized the Railroad Company, pending further order of this Court, among other things, to run, manage, maintain, operate and keep in proper condition and repair the railroads, railroad systems and property of the Railroad Company, wherever situated, whether in the state and judicial district of Colorado, or elsewhere, and to manage and conduct its business as a railroad company, all according to law and subject to such supervision and control by the Court as the Court might exercise by its further orders entered herein.

18. The petitioner prays leave to refer to said petition of the Railroad Company, and the said order entered thereon, [fol. 405] or to duly certified copies thereof when the same shall be produced upon the final hearing, or upon any hearing in this proceeding, with the same force and effect as if said petition and order were herein set forth at length.

19. Upon information and belief, the Railroad Company, subsequent to the entry of the aforesaid order by this Court, has operated the lines of railroad, properties and premises of every kind and description, including the properties subject to the lien of the General Mortgage, and has collected and received the tolls, revenues, earnings, income, rents, issues and profits of said property and of the property subject to the Utah Fuel Agreement subject to the supervision and control of this Court pursuant to said order and to the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, by reason whereof the petitioner is unable, save as herein sought, to take possession thereof and to administer its trust as in the General Mortgage and in the assignment of the Railroad Company's rights and interests under the Utah Fuel Agreement it is provided should be done in the event of a default as herein specified.

20. Upon information and belief, the Railroad Company has defaulted in the payment of the interest due on January 1, 1935 on $2,825,000 principal amount of The Rio Grande Western Railway Company First Trust Four Per Cent Gold Bonds due July 1, 1939 and in the payment of interest [fol. 406] due on July 1, 1935 on $15,190,000 principal amount of said The Rio Grande Western Railway Company First Trust Four Per Cent Gold Bonds due July 1, 1939, all secured by the First Trust Mortgage dated July 1, 1889 made by The Rio Grande Western Railway Company; in the payment of interest due on April 1, 1935 and October 1, 1935 on $15,080,000 principal amount of The Rio Grande Western Railway Company First Consolidated and Collateral Trust Four Per Cent Gold Bonds due April 1, 1949, secured by the First Consolidated Mortgage dated April 1, 1899 made by The Rio Grande Western Railway Company; in the payment of interest due on January 1, 1935 and July 1, 1935 on $34,125,000 principal amount of The Denver and Rio Grande Railroad Company First Consolidated Four Per Cent Gold Bonds due January 1, 1935 and in the payment of interest due on January 1, 1935 and July 1, 1935 on $6,382,000 principal amount of The Denver and Rio Grande Railroad Company First Consolidated Four and One-Half Per Cent Gold Bonds due January 1, 1936, all secured by the Consolidated Mortgage dated July 15, 1886 as supplemented January 1, 1898 made by The Denver and Rio Grande Railroad Company; in the payment of interest due on April 1, 1935 and October 1, 1935 on $2,000,000 principal amount of The Denver and Rio Grande Western Railroad Company Refunding and Improvement Six Per Cent Gold Bonds, Series A, due October 1, 1974 and in the payment of interest due on April 1, 1935 and October 1, 1935 on $12,000,000 principal amount of The Denver and [fol. 407] Rio Grande Western Railroad Company Refunding and Improvement Five Per Cent Gold Bonds, Series B, due April 1, 1978, all secured by the Refunding and Improvement Mortgage, dated as to Series A, February 1, 1924, and as to Series B, April 1, 1928, made by The Denver and Rio Grande Western Railroad Company, all of said mortgages constituting direct liens prior to that of the General Mortgage on the lines of railroad or parts thereof subject to the General Mortgage or owned by a controlled company of the Railroad Company, and such default still continues.

21. Upon information and belief, by reason of the defaults mentioned in the foregoing paragraph 20 and by reason of the fact that, as alleged hereinabove in paragraph 17 this Court in the above entitled proceeding has approved the petition of the Railroad Company as properly filed under Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, and authorized the Railroad Company, pending the further order of this Court, among other things, to take control of and operate the trust estate substantially as a whole, and by reason of the happening of other events of default as specified in Section 2 of Article Ten of the General Mortgage, the petitioner is entitled, under the terms of the General Mortgage, to exercise the right of entry thereby conferred and to proceed to protect and enforce its rights and the rights of the holders of the Bonds in the manner described in the General Mortgage and now is entitled to collect and to receive all tolls, reve- [fol. 408] nues, earnings, income, rents, issues and profits of the mortgaged premises, and also the income from stocks and bonds and other obligations and securities subject to the General Mortgage and to apply the same as provided in the General Mortgage, and also to exercise the right conferred by the assignment of the rights and interests of the Railroad Company under the Utah Fuel Agreement to require the sale by the trustee under said Agreement of the stock of Utah Fuel Company, the subject of said Agreement (or any securities or other property held subject to said Agreement for which such stock may have been exchanged pursuant to the terms of said Agreement) and generally to exercise any and all rights and powers in and by the General Mortgage and said assignment conferred and provided to be exercised by the petitioner thereupon, upon the occurrence and continuance of any default as in the General Mortgage provided.

22. Upon information and belief, default has been made by the Railroad Company in the payment of the installment of interest which became due on August 1, 1935 upon all of the Bonds issued and outstanding and secured by the General Mortgage and that such default still continues.

23. Upon information and belief, the Board of Directors of the Railroad Company decided at a meeting held on January 27, 1934 to withhold, for the time being, payment

of interest due February 1, 1934 on the Bonds and at a meet-
[fol. 409] ing held on March 23, 1934 proposed a plan for avoiding a default under the General Mortgage. The plan provided that holders of the Bonds who assented thereto would receive payment of one-half of the February 1, 1934 coupon and should withhold, until December 1, 1935, presentation of the balance of said coupon and the full amount of the coupons maturing August 1, 1934 and February 1, 1935. The Railroad Company placed in a special deposit subject to requisition by City Bank Farmers Trust Company, as agent for the Railroad Company, a sum sufficient to pay Fifty per cent (50%) of the face amount of the interest coupon on the Bonds of the Railroad Company due February 1, 1934. As of October 31, 1935 holders of $23,555,600 principal amount of the Bonds out of the total authorized and outstanding issue of $29,808,000 had assented to the plan by presenting to City Bank Farmers Trust Company, as agent for the Railroad Company, the three coupons due respectively, February 1, 1934, August 1, 1934 and February 1, 1935, detached from the Bonds, for endorsement of the payment of one-half of the face amount of the February 1, 1934 coupon, and for stamping each of such coupons with an appropriate legend indicating the acceptance of the plan. It was provided in the plan that whenever the Railroad Company determined that sufficient of the holders of the Bonds had accepted the plan to make the same effective, it would declare the plan operative by serving notice thereof on City Bank Farmers Trust Company and causing notice thereof to be published and thereupon pre-
[fol. 410] sentation of each of such coupons stamped, as aforesaid, should be deferred until December 31, 1935. It was further provided in the plan that in the event receivers or trustees for the Railroad Company were appointed, the holders of the Bonds and the coupons presented for stamping should cease to be subject to the plan. Upon information and belief City Bank Farmers Trust Company, in its individual or in any other capacity, has received no notice from the Railroad Company nor from any other source declaring the plan operative. Upon information and belief, holders of the Bonds who did not assent to the plan have received no payment on said coupons maturing respectively February 1, 1934, August 1, 1934 and February 1, 1935.

24. Upon information and belief, various mortgages exist upon the properties of the Railroad Company including the General Mortgage, as aforesaid; the liens and provisions of said mortgages differ among themselves and the aggregate of the outstanding Bonds secured by them, respectively, is very great, amounting to many millions of dollars; some or all of said mortgages purport, or may be claimed, to constitute liens upon the property covered by the lien of the General Mortgage, or some portions thereof, wholly or partly superior to the General Mortgage lien, but the amount and extent of such liens, if any, are unknown to your petitioner.

25. No proceedings have been had at law or in equity for the protection and enforcement of the rights of the peti- [fol. 411] tioner, and/or of the rights of the holders of the Bonds or for the foreclosure of the General Mortgage or for the collection or enforcement of the mortgage debt, or any part thereof, or for the enforcement of the rights conferred by the assignment of the rights and interests of the Railroad Company under the Utah Fuel Agreement, save only this proceeding, and the petitioner has no adequate relief at law, and the relief to which it is entitled can only be granted by this Court.

26. Upon information and belief, the Railroad Company owns or leases and operates lines of railroad, substantially all continuous and connecting and forming a complete railroad system, lying within the States of Colorado, Utah and New Mexico; the Railroad Company owns and leases certain rolling stock and equipment and owns other property, real and personal, as well as rights, privileges and franchises appertaining to, or used in connection with, its lines of railroad and business, and certain bonds, stocks and other securities. The petitioner is advised and, therefore, avers that by reason of the premises and of the matters hereinbefore in this petition alleged, and of the defaults hereinbefore in this petition alleged, as well as by reason of the impairment of and danger and injury to the security of its said mortgage lien hereinbefore alleged, the petitioner is entitled to file this petition, to have the relief herein prayed for, and to have all such tolls, revenues, earnings, income, rents, issues and profits of the properties of the Railroad Company

[fol. 412] and every part thereof segregated and sequestered for the benefit of the petitioner and of the holders of the Bonds and interest obligations secured by said mortgage lien; and the petitioner hereby demands that said tolls, revenues, earnings, income, rents, issues and profits be so segregated and sequestered as aforesaid, and be applied, subject only to such expenses and other uses as may legally and properly, having due regard to the rights of the petitioner and the holders of the Bonds, be incurred and made in the operation and preservation of the property, rights and franchises covered by the petitioner's said mortgage lien, to and for the benefit of the petitioner and of the holders of the Bonds and interest obligations, and to and for the proper protection of the petitioner's said mortgage lien and the security thereof.

27. Upon information and belief, numerous questions of vital and far-reaching importance, in so far as they affect the General Mortgage and the interests of the holders of the Bonds, will be raised in the above entitled proceedings to come before this Court for its decision thereon, and, therefore, the petitioner alleges that, in view of the importance to it and to the holders of the Bonds of the questions which will arise from time to time in these proceedings, it should be permitted to intervene in these proceedings for the purpose of protecting its rights and interests and the interests of the holders of the Bonds.

28. By reason of the premises the petitioner is unable adequately to execute its trust in the manner specified and [fol. 413] provided in and by the General Mortgage without the aid and interposition of this Court, nor can its said trust be executed, as the petitioner is advised and charges, and the rights of all the parties in interest be ascertained and fully protected, otherwise than by segregating and sequestering the tolls, revenues, earnings, income, rents, issues and profits of the Railroad Company and every part thereof.

Wherefore, the petitioner prays:

1. That the petitioner be permitted to intervene generally in the above entitled proceeding for the purpose of protect-

ing its rights as trustee under the General Mortgage, dated as of February 1, 1924, and the rights of the holders of the Bonds issued thereunder, and further and more specifically for the purposes of this petition; and that this Court direct that notices of all motions, applications and petitions herein be served upon the attorneys for the petitioner;

2. That the General Mortgage and the assignment of the rights and interests of the Railroad Company under the Utah Fuel Agreement may be decreed to be valid and subsisting liens, upon all of the railroads and property, real and personal, rights, privileges and franchises in the General Mortgage and said assignment described or thereby conveyed or transferred or intended so to be, or shall have become subject thereto (save and except such property as may have been duly released from the lien of the General Mortgage), and upon the tolls, revenues, earnings, income, [fol. 414] rents, issues and profits of the Railroad Company and every part thereof, prior and superior to the interests or liens or claims of the debtor Railroad Company;

3. That the nature, extent and character of said property and premises may be ascertained and determined; that an account be taken of all the railroads and property, real personal and mixed, which belonged to the Railroad Company at the date of the above mentioned General Mortgage and of all the railroads, property, additions, extensions, improvements, renewals and replacements acquired by the Railroad Company since the date of said General Mortgage;

4. That this Court direct the Railroad Company and such trustee or trustees, appointed in this proceeding, of the Railroad Company as may from time to time be acting, to keep such records and accounts, in addition to the accounts prescribed by the Interstate Commerce Commission, as will permit the segregation and allocation of the earnings and expenses between and to the divisions and parts of the property of the Railroad Company, which are separately subject to the liens of the several mortgages of the Railroad Company;

5. That this Court determine upon a method or formula by which such segregation and allocation shall be made,

with due regard to the rights and interests of the petitioner, as trustee under the General Mortgage and of the holders of the Bonds, and refer to the Interstate Commerce Com-
[fol. 415] mission for its recommendations after hearings thereon, if the parties to these proceedings shall so request, or if said Commission shall determine the same to be necessary or desirable, as to the method or formula by which such segregation or allocation shall be made.

6. That this Court direct that such segregation and allocation be made at the expense of the estate of the Railroad Company;

7. That all tolls, revenues, earnings, income, rents, issues and profits of the property subject to the lien of the General Mortgage, and every part thereof, which shall come into the possession of the Railroad Company or of any trustee or trustees thereof appointed in this proceeding be impounded as of the date of the filing of this petition (without waiver of any claim of the petitioner to tolls, revenues, earnings, income, rents, issues and profits, accruing prior to the filing of this petition) and segregated and sequestered by or under the direction of this Court for the benefit of the petitioner, as trustee, and of the holders of the Bonds and interest obligations secured by said mortgage lien and be applied to and for their benefit, subject only to such expenses and other uses as may legally and properly be incurred in the operation and preservation of said property, having due regard for the rights of the petitioner and the holders of the Bonds and for the protection of the security of said mortgage lien, and that the rights of the petitioner, as trustee, and of the holders of the Bonds and interest obligations may be carefully and fully preserved;

[fol. 415a] 8. That the Railroad Company be required to make answer to all and singular the matters hereinbefore stated and charged, but not under oath, answer under oath being hereby expressly waived, and to stand to and abide by and perform such orders, directions or decrees as shall be made herein and as to this Court shall seem equitable and just; and

9. That the petitioner may have such other and further relief in the premises as the nature and circumstances of

this proceeding may require and as to this Court may seem just and proper.

And the petitioner as in duty bound will ever pray, etc. Dated: November 19th, 1935.

City Bank Farmers Trust Company, as Trustee under the General Mortgage Dated as of February 1, 1924, of The Denver and Rio Grande Western Railroad Company, By Stewart C. Pratt, Vice-President. Ralph Hartzell, First National Bank Building, Denver, Colorado. Mitchell, Taylor, Capron & Marsh, 20 Exchange Place, New York, N. Y., Attorneys and Solicitors for City Bank Farmers Trust Company, as Trustee, etc.

[fol. 415b] *Duly sworn to by Stewart C. Pratt. Jurat omitted in printing.*

Filed Nov. 25, 1935—10:45 A.M. Charles W. Bishop, Clerk.

[fol. 416] In United States District Court

Answer of City Bank Farmers Trust Company, as Trustee, to the Petition of Trustees for Authority to Borrow Money and to Issue Their Certificates of Indebtedness Thereof, Verified June 22, 1936

City Bank Farmers Trust Company, as trustee under the mortgage and deed of trust (hereinafter called the "General Mortgage"), dated as of February 1, 1924, made by The Denver and Rio Grande Western Railroad Company (said Trust Company as such trustee being hereinafter called the "General Mortgage Trustee"), answering the petition herein verified June 22, 1936, of Wilson McCarthy and Henry Swan, as trustees of the property of The [fol. 417] Denver and Rio Grande Western Railroad Company, or so much of said petition as the General Mortgage Trustee is advised is material and is necessary for it to answer, respectfully shows to this Court as follows:

I. The General Mortgage Trustee denies that it has any knowledge or information thereof sufficient to form a belief as to the allegations, or any of them, contained in paragraphs 2 to 9, inclusive, of said petition.

II. The General Mortgage Trustee alleges, upon information and belief, that a number of items included in the "Petition of Trustees for Approval of Certain Expenditures for Improvements" filed herein on March 21, 1936, and in Schedules 1 to 4, inclusive, appended thereto as exhibits, expenditures for which were authorized by an order of this Court entered herein on or about March 21, 1936, and sometimes designated as "Order No. 31", are items that are not essential either (a) for the safe operation of, or (b) for the preservation of, the property subject to the lien of the General Mortgage.

III. The General Mortgage Trustee alleges, upon information and belief, that a number of items included in the "Petition of Trustees for Approval of Additional Expenditures for Improvements" filed herein on April 23, 1936, and in Schedule 5, appended thereto as an exhibit, expenditures for which were authorized by the order of this Court entered herein on or about April 23, 1936, sometimes [fol. 418] designated as "Order No. 44" and entitled "Order Approving and Authorizing Additional Expenditures for Certain Improvements", are items that are not essential either (a) for the safe operation of, or (b) for the preservation of, the property subject to the lien of the General Mortgage.

IV. The General Mortgage Trustee alleges, upon information and belief, that if such items included in said schedules designated as schedules 1 to 5, inclusive, as are not essential either (a) for the safe operation of, or (b) for the preservation of, the property subject to the lien of the General Mortgage, were omitted from the authorizations contained in said Orders Nos. 31 and 44, said trustees would be able to finance all of such expenditures as are essential for said purposes and to make the additional expenditures referred to and described in paragraph 2 of said petition verified June 22, 1936, without the issuance of all or any part of the Trustees' certificates of indebtedness applied for in said petition.

V. The General Mortgage Trustee objects to the issuance of any trustees' certificates of indebtedness, having any lien upon any part of the property covered by the General Mortgage prior to the lien thereon of the General Mortgage, for the purpose of financing any of the expendi-

tures authorized by said Orders Nos. 31 and 44, or for any of the expenditures contemplated by said paragraph 2 of said petition verified June 22, 1936, unless and until there have been eliminated from said Schedules 1 to 5, inclusive, [fol. 419] all items that are not essential for either (a) the safe operation of, or (b) the preservation of, the property subject to the lien of the General Mortgage.

VI. The General Mortgage Trustee denies that this Court has power to authorize the issuance of trustees' certificates of indebtedness, having any lien on any part of the property covered by the General Mortgage prior to the lien thereon of the General Mortgage, for the purpose of financing any of said expenditures unless and until all items included therein that are not essential (a) for the safe operation of, or (b) for the preservation of, the property subject to the lien of the General Mortgage have been eliminated and unless and until it has been established to the satisfaction of this Court that the issuance of such trustees' certificates of indebtedness are essential either (a) for the safe operation of, or (b) for the preservation of, the property subject to the lien of the General Mortgage.

Wherefore, the General Mortgage Trustee respectfully prays:

1. That this Court re-examine the items included in said Schedules 1 to 5, inclusive, for the purpose of eliminating therefrom, and that this Court eliminate therefrom, all items therein included that are not shown to the satisfaction of this Court to be essential either (a) for the safe operation of, or (b) the preservation of, the property subject to the lien of the General Mortgage;

2. That, unless and until such re-examination and such [fol. 420] elimination have been effected, said petition verified June 22, 1936, be in all respects denied; and

3. That the General Mortgage Trustee may have such other and further relief in the premises as the nature of the case may require and as to this Court may seem proper.

City Bank Farmers Trust Company, as trustee under the mortgage and deed of trust dated as of February 1, 1924, made by The Denver and Rio Grande Western Railroad Company, by Ralph E.

Morton, Trust Officer; Mitchell, Taylor, Capron & Marsh, 20 Exchange Place, New York, N. Y.; Ralph Hartzell, First National Bank Building, Denver, Colorado; Solicitors for City Bank Farmers Trust Company, as trustee as aforesaid.

[fol. 421] *Duly sworn to by Ralph E. Morton. Jurat omitted in printing.*

Filed July 17, 1936, 10:35 A.M. Charles W. Bishop, Clerk.

[fol. 422] The Denver and Rio Grande Western Railroad Company

The Denver and Salt Lake Western Railroad Company
The Denver and Salt Lake Railway Company
The Rio Grande Junction Railway Company
Goshen Valley Railroad Company

PROPOSED PLAN OF CONSOLIDATION AND REORGANIZATION AS OF JANUARY 1, 1937

Interstate Commerce Commission
Finance Docket No. 11002

Pierce & Greer, 35 Wall Street, New York, N. Y.
Hodges, Wilson & Vidal, Equitable Bldg., Denver Colorado, of Counsel.
July 28, 1936.

[fol. 423] The Denver and Rio Grande Western Railroad Company
The Denver and Salt Lake Western Railroad Company
The Denver and Salt Lake Railway Company
The Rio Grande Junction Railway Company
Goshen Valley Railroad Company

Proposed Plan of Consolidation and Reorganization as of January 1, 1937

I

Historical Introduction

The Denver and Rio Grande Western Railroad Company is the successor to two principal previous companies,

The Denver and Rio Grande Railroad Company and The Rio Grande Western Railway Company.

The first of these two predecessor companies was incorporated in 1870 to acquire and construct a line of railroad in Colorado and New Mexico. It was reorganized in 1886 and its properties conveyed to The Denver and Rio Grande Railroad Company, which executed its Consolidated Mortgage (the bonds issued thereunder hereinafter referred to as the D&RG Consols) as a part of the reorganization plan in that year.

The second of the predecessor companies above mentioned originated in The Denver and Rio Grande Western Railway Company, which was incorporated in 1881 to acquire and construct a line of railroad from Ogden, Utah, to the Utah-Colorado State line, with branches. That company was reorganized in 1889 and its properties transfer-
[fol. 424] red to The Rio Grande Western Railway Company, which executed its First Trust Mortgage (the bonds issued thereunder hereinafter referred to as the RGW First Trust 4s) as a part of the reorganization plan in that year. Ten years later it executed its First Consolidated Mortgage (the bonds issued thereunder hereinafter referred to as the RGW Consols).

Very close relations obtained between these two predecessor companies, and in 1904, because of the practical closing of the Ogden gateway to through traffic to and from California, they entered into an investigation of the feasibility of an independent line from Salt Lake City to San Francisco. As a result of this investigation, the managements decided to assist in promoting the plans of The Western Pacific Railway Company, and agreed to guarantee an issue of $50,000,000 First Mortgage Bonds of the latter company, while the RGW agreed to purchase sufficient second mortgage bonds of that company to ensure the completion of the line. In connection with this agreement, the D&RG and the RGW were to receive 2/3 of the capital stock. A traffic agreement was also entered into providing for a joint through line from Denver to San Francisco. In 1908 the D&RG and RGW were formally consolidated into a new corporation known as The Denver and Rio Grande Railroad Company. This company succeeded to the obligations of both predecessor companies with respect to the Western Pacific Railway Company. A receivership and reorganization of the Western Pacific in

1915 led directly to the loss of the Western Pacific and to [fol. 425] a reorganization of The Denver and Rio Grande Railroad Company of 1908. This reorganization was effectuated by conveying its properties in 1920 to a new corporation organized at that time in Delaware for the purpose, The Denver and Rio Grande Western Railroad Company, (hereinafter referred to as the D&RGW) which is the present company.

The reorganization of 1920 did not reduce the fixed charges of the company, and a further reorganization became necessary in 1922 and was effectuated in 1924. As a part of this reorganization the company executed its Refunding and Improvement Mortgage (to provide for new money and future financing) and its General Mortgage (to provide for the old bonds which were readjusted by the plan).

II

Location of Properties

The main line of the company extends from Ogden and Salt Lake City on the west (where it connects with the Western Pacific, the Union Pacific and the Southern Pacific) to Pueblo and Denver on the east (where it connects with the Missouri Pacific, the Burlington, the Rock Island, the Union Pacific, the Santa Fe and the Colorado and Southern). In addition there are a large number of branch lines, particularly in Colorado. The branch lines in Colorado include a substantial mileage of narrow gauge line. These matters are more fully shown on a map, attached hereto marked Exhibit A.

[fol. 426] For the purpose of mortgage liens the system may be roughly divided into two halves at Crevasse, Colorado, a point near the Utah-Colorado State line. The properties west of Crevasse represent, generally speaking, the properties acquired from the RGW of 1889 and are subject to the RGW First Trust 4s as a first lien and the RGW Consols as a second lien. The RGW Consols are also a first lien on the entire capital stock of the Utah Fuel Company. The properties east of Crevasse represent, generally speaking, the properties acquired from the D&RG of 1886 and are subject to the D&RG Consols as a first lien. The Refunding and Improvement Mortgage is a lien junior to all of the above, and the General Mortgage is a lien junior

thereto. Certain branch lines on both halves of the system are subject to different mortgages as a first lien, depending on the date of construction or acquisition.

An essential link in the main line of the eastern half (about 62 miles, between Grand Junction and Rifle, Colorado) is owned by the Rio Grande Junction Railway Company. $2,000,000 principal amount of its First Mortgage Bonds (hereinafter referred to as the RGJ 5s) are outstanding in the hands of the public. All of a junior issue of bonds and all of the stock are pledged under the Refunding and Improvement Mortgage. The properties are operated by the D&RGW under lease.

A small amount of equipment trust certificates is outstanding, and the lien on the equity in such equipment is held by the Refunding and Improvement Bonds. The lien [fol. 427] on most of the remaining equipment is held by the D&RG Consols and the Refunding and Improvements.

In the reorganization of 1924 it was realized that the proper growth of the properties would require the development of a short line between Dotsero and Denver, Colorado, and a policy to favor such a development was written into the reorganization plan and the by-laws of the reorganized company.

III.

The Dotsero Cutoff

The Denver and Salt Lake Railroad Company owned a line of railroad extending from Utah Junction (near Denver) in a westerly direction to Craig, Colorado. As a result of difficult operating conditions over the continental divide and lack of traffic, the road went into receivership in 1917.

There had been public agitation for many years in Denver to construct a tunnel under the continental divide with public funds. Spurred by the probability that otherwise the Denver and Salt Lake Railroad might be abandoned, this movement finally came to a head in 1922, and the tunnel was constructed by the Moffat Tunnel Commission. This tunnel made possible satisfactory operating conditions across the continental divide, and opened up the possibility of developing the Denver and Salt Lake into a transcontinental route.

As a result that company was reorganized in 1926, and its properties transferred to the present company, The Denver and Salt Lake Railway Company (hereinafter [fol. 428] referred to as the D&SL). The Moffat Tunnel was leased to the D&SL in the same year. Soon afterwards the D&SL organized a subsidiary, The Denver and Salt Lake Western Railroad Company (hereinafter referred to as the D&SLW) to construct a line of railroad from Bond-Orestod to Dotsero, Colorado, in order to connect with the line of the D&RGW and promote full utilization of the Moffat Tunnel.

Carrying out the policy expressed in its reorganization plan, the D&RGW asked and obtained authority from the Interstate Commerce Commission (1) to acquire all of the stock of the D&SLW and to take a lease of its line, and (2) to acquire all of the stock of the D&SL and to enter into a trackage agreement permitting joint operation over its line between Orestod and Utah Junction. Authorization was conditioned on purchasing all shares of the D&SL and on completing construction of the D&SLW line within a designated time. Accordingly, 29,470 shares of D&SL stock were purchased.

In order to complete the project outlined by the Commission, the D&RGW borrowed from Reconstruction Finance Corporation (hereinafter referred to as RFC) $3,631,000 to finance the purchase of the D&SLW stock and the construction of its line, and $3,110,850 to finance the purchase of the remaining shares of D&SL stock, both loans to bear interest at the rate of 5% per annum (later reduced to 4%). All shares of stock so purchased, and the D&SL shares previously purchased by it with its own funds, were pledged as security for these obligations.

[fol. 429] Subject to such pledge, the D&RGW thus owned all the stock of D&SLW (and operated its properties under lease) and virtually all the stock of the D&SL (and operated over a part of its line under a trackage agreement). The D&SLW line was completed and operation over the Dotsero Cutoff was begun on June 15, 1934.

IV

Present Capitalization

The D&RGW now has the following securities outstanding (excluding pledged bonds and short term debt):

	Principal	Annual Interest
Equipment Trusts	$1,805,000	$68,408
RGW First Trusts (4%)	15,190,000	607,600
RGW Consols (4%)	15,080,000	603,200
D&RG Consols (4%)	34,125,000	1,365,000
D&RG Consols (4½%)	6,382,000	287,190
D&RGW Refunding and Improvements (6%)	2,000,000	120,000
D&RGW Refunding and Improvements (5%)	12,000,000	600,000
D&RGW Generals (5%)	29,808,000	1,490,400
Preferred Stock	16,445,600	
Common Stock (300,000 shares of no par value)	62,457,540	
		$5,141,798

[fol. 430] In addition there are outstanding $2,000,000 principal amount of RGJ 5s, on which the annual interest is $100,000, thus bringing fixed interest requirements to $5,241,798 per year.

Beginning in 1932 the D&RGW was compelled to borrow short term funds in order to continue service on the above obligations. For those and general corporate purposes it borrowed (1) $1,500,000 from the Chase National Bank, all of which is now unpaid and outstanding, bearing interest at 5%; (2) $500,000 from The Railroad Credit Corporation, $340,923 of which was outstanding as of May 31, 1936, bearing interest at 1½%; and (3) $3,950,000 from the RFC, all of which is now unpaid and outstanding, bearing interest at 6% (later reduced to 4%). The two other loans from RFC ($3,631,000 for construction of the D&SL-W and $3,110,850 for acquisition of D&SL) have already been mentioned. The total of these loans is $12,532,773 and annual interest thereon at the above rates is $507,788, thus bringing the total fixed interest requirements to $5,749,586.

The Company's total current liabilities as of May 31, 1936, consisted of the following:

[fol. 431]

Account	
758—Loans and bills payable	$ 6,936,773
759—Traffic and Car Service balances payable	668,656
	668,656
760—Audited accounts and wages payable	8,746,073
761—Miscellaneous accounts payable	24,187
762—Interest matured unpaid	9,055,273
764—Funded debt matured unpaid	43,385,100
766—Unmatured interest accrued	1,761,275
767—Unmatured rents accrued	315,447
768—Other current liabilities	21,238
	$70,914,024

The RGJ has issued no securities other than the $2,000,000 principal amount of RGJ 5s outstanding and the bonds and stock pledged under the Refunding and Improvement Mortgage. The D&SLW has no securities outstanding other than the common stock above mentioned. The D&SL has outstanding in addition to the common stock above mentioned, $1,500,000 principal amount of First Mortgage 4s (redeemable at 101) and $11,000,000 principal amount of Income Mortgage 6s (redeemable at 102), which would become a fixed charge in the event of a merger or consolidation with the D&RGW. There are likewise outstanding $2,217,000 principal amount of The Northwestern Terminal Railroad Company First Mortgage Income 5s (redeemable at 102); the properties of that com-
[fol. 432] pany are operated by the D&SL under lease, and interest on its bonds would become a fixed charge in the event of a merger or consolidation of the D&SL with the D&RGW. Present rental paid by the D&SL for its use of the property of The Northwestern Terminal Railroad Company is based on 2% per annum on the First Mortgage Income Bonds, which amount is subject to increase with increases in the traffic of the D&SL.

V

Earnings

The operating revenues and the net income available for interest of the D&RGW since the reorganization of 1924 are as follows:

Year	Operating Revenues	Net Income Available for Interest
1924	$33,011,557	$2,785,660
1925	33,629,463	6,799,142
1926	34,030,308	7,711,952
1927	33,121,168	6,475,860
1928	33,200,656	7,317,286
1929	34,828,668	8,839,182
1930	29,747,537	7,119,659
1931	23,484,818	5,204,504
1932	17,560,621	2,894,579
1933	17,112,793	3,398,795
1934	19,246,850	2,600,278
1935	20,944,229	2,459,364

On a consolidated basis including the Rio Grande Junction, the net income available for interest would be increased $100,000 per annum.

[fol. 433] Operating revenues for the first five months of 1936 were $9,171,663 compared with $7,320,764 for the same period in 1935. Corresponding figures for net income available for interest were $197,195 and $405,619 respectively.

The operating revenues and the income available for interest of the D&SL since the opening for operation of the Moffat Tunnel in February, 1928, are as follows:

Year	Operating Revenues	Net Income Available for Interest
1928	$4,011,663	$1,202,707
1929	3,981,131	1,420,104
1930	3,197,282	841,328
1931	2,302,835	835,976
1932	1,915,469	566,453
1933	1,657,331	432,506
1934	1,620,006	602,591
1935	2,234,882	899,950

Operating revenues for the first five months of 1936 were $1,100,123, compared with $670,678 for the same period in 1935. Corresponding figures for net income available for interest were $216,526 and $249,422 respectively.

VI

Reorganization Proceedings

As a result of the abrupt decline in earnings and in net income available for interest which began in 1932, the D&RGW was forced to borrow short term funds as above [fol. 434] stated, and upon the exhaustion of its credit, it filed a petition for reorganization under Section 77 of the Bankruptcy Act. Such petition was filed on November 1, 1935, in the District Court of the United States for the District of Colorado, and Trustees appointed by that Court have subsequently administered the property. A similar petition was filed at the same time in the same Court by the D&SLW, and a separate Trustee was appointed by that Court.

When the necessity for a reorganization became apparent, the D&RGW undertook exhaustive studies into the earnings of the properties by mortgage divisions and other factors underlying a reorganization. It has continued those studies since the filing of the petitions in bankruptcy. It has held numerous conferences with the holders of large amounts of the respective issues of its bonds and other creditors in order to develop a plan. The object has been to provide a new capital structure for the properties, safely within their ability to support, and apportioned among the existing security holders and other creditors on the basis of the respective seniorities of their position. These studies and conferences have materially aided in the development of this plan of reorganization.

This plan of reorganization is being filed by the Company before the District Court of the United States for the District of Colorado and the Interstate Commerce Commission, under and pursuant to subdivision (d) of Section 77 of the Bankruptcy Act, as amended.

[fol. 435] VII

General Characteristics of Plan

The plan provides for a consolidation of the physical properties of the D&RGW, the D&SLW, the D&SL, the RGJ and the Goshen Valley Railroad Company, (the latter a small branch line in Utah), so that the new company will own in fee continuous transcontinental routes from Denver and Pueblo on the east to Salt Lake City and Ogden on the west via the Moffat Tunnel and the Royal Gorge.

Due to the changes in operating conditions and earning power of this property resulting from the construction of the Moffat Tunnel and the Cutoff, no extensive period of time is available which is representative of the earnings of this consolidated property under these latest conditions. However, a close analysis of the conditions during the years 1932, 1933 and 1934 justifies the belief that the average net income of the consolidated property during those three low years of the depression would have been slightly in excess of $3,000,000 per annum if the Cutoff and tunnel had both been in operation during that period. The actual net income which would have been available for interest on the consolidated property during the calendar year 1935 was $3,479,521. In the interests of a conservative plan and to guard against the possibility of any subsequent temporary reduction in earnings it is proposed that the total fixed interest charge of the new company be $2,358,445, which amount would have been covered 1.47 times in 1935.

The plan also provides for an issue of Income Bonds so [fol. 436] limited in amount that it is believed that the bonds presently to be issued would have had their interest earned and paid during the calendar year 1935 if the consolidated property had been operating as a unit in that year.

The underlying bonds which cannot be offered fixed interest bearing securities or income bonds (being portions of the D&RG Consols and Refunding and Improvements) are offered first preferred stock. The General Mortgage Bonds and the present Preferred Stock are offered a participating preferred stock in varying proportions. Present common stockholders will agree to cancellation of certain bonds now held by them, will agree to subscribe to new fixed interest bearing bonds in order to provide new capital, and will receive the new common stock,

The allocation of the various issues of bonds to the present bondholders has been based on an exhaustive study of the earnings of the property segregated by mortgage districts during the 12 months ended June 30, 1935, being the first 12 months subsequent to the opening of the Cutoff. In allocating revenues as between mortgage districts a mileage prorate has in all instances been used, except that the Cutoff and the operations under trackage rights by the D&RGW over the line of the D&SL have been allocated revenues on the basis of mileage over the old line from Dotsero to Denver through Pueblo in recognition of——

(1) difficult operating conditions over the D&SL.

(2) abnormally high costs of maintenance on the [fol. 437] D&SL during 1934 and 1935, because of unusual improvement work which will probably continue for several years.

(3) high rental necessary to be paid to the Moffat Tunnel Commission for the use of the Moffat Tunnel.

(4) undeveloped condition of the traffic via this route in 1934 and 1935 as compared with the prospective future development of such traffic.

Original estimates made in 1928 before the construction of the Cutoff was undertaken indicated that it would take five years to develop the normal amount of traffic via this route. Despite the generally lower level of business in 1934 and 1935 as compared with 1928, the volume of traffic over the Cutoff during its first year in operation was fully up to the expectations of 1928.

Even on this basis the earnings from the D&SL and the operations of the D&RGW between Denver and Dotsero by the new route are not sufficient entirely to support the interest charges on the refunded obligations of the D&SL as hereinafter set forth and on the new First and Refunding Bonds offered to the RFC, if the same earnings ratios are applied to these properties as were applied to the other mortgage districts. To the extent that these proposed fixed charges are not presently covered by the earnings of the underlying properties and the other collateral, they have been allocated for support to the RGW First Trust 4s of 1939 and to the RGJ 5s of 1939, these being the only two [fol. 438] mortgage districts which have benefited from the

Cutoff and which will benefit to a greater extent as the business over the Cutoff increases.

In the set-up of allowances for rental of equipment as between the different mortgage divisions, the Refunding and Improvement Bonds have been considered to hold a first lien on equipment acquired since the consolidation of 1908 with the proceeds of

> Refunding and Improvement Bonds;
> Equipment Trust certificates;
> Purchase money agreements; and
> Other bonds later refunded by the Refunding and Improvement Bonds, or by bonds junior thereto;

together with all other equipment acquired subsequent to the date of the Refunding and Improvement Mortgage. The remaining equipment acquired since the consolidation of 1908 has been considered to be subject to a direct first lien of the D&RG Consols.

In estimating the income available to the consolidated company for interest on the Income 4s, consideration has been given to the probable savings in overhead expenses which will result from the consolidation, to the reduced net income resulting from the sale of government securities by the D&SL in connection with its refunding operations during the latter part of 1935, and to the increased rental which it will be necessary to pay for the use of the property of the Northwestern Terminal as a result of the consolidation. The consolidated company will have six months after the [fol. 439] effective date of consolidation to decide whether it wishes to continue to lease the property of the Northwestern Terminal at the increased rental, but in order to be conservative present calculations are based on the payment of the full increase.

At the suggestion of the Chairman of the Board of the Reconstruction Finance Corporation, considerable study has also been given to the inclusion of the properties of the Western Pacific Railroad Company in the new consolidated company, but this is not proposed at this time. A special committee of the Board of Directors of the D&RGW has been appointed, with authority to negotiate such a consolidation, and this plan has been so drafted that if a consolidation with the Western Pacific can subsequently be worked out so as finally to achieve the purposes in mind

in 1904 when the construction of that company was originally undertaken, such consolidation can be made effective without resetting the capital structure of the new company. In that event a supplemental plan modifying the plan now presented will be filed.

The provisions of the plan in detail are set out below:

[fol. 440] VIII

Proposed Capitalization of New Company

Fixed Interest bearing debt:	
Equipment trust obligations remaining undisturbed	$ 1,805,000
Western Division First Mortgage 3½% Bonds	22,680,233
First and Refunding Mortgage 4% Bonds (incl. $792,000 pledged)	37,405,730
Total fixed interest bearing debt	$61,890,963
Contingent Interest bearing debt: (excl. $1,558,000 Ten Year Collateral Notes)	
General Income Mortgage 4% Bonds (incl. $766,000 of $2,479,000 pledged)	$22,063,886
Total debt	$83,954,849
First Preferred Stock, $100 par value, 4½% dividends (excl. $2,825,000 pledged)	$33,208,618
Participating Preferred Stock, $1 par value, $5 dividends (No. Shares) at least	413,842
Common Stock, $1 par value (No. Shares)	200,000
Western Division First Mortgage 3½% Bonds —Series A	$22,680,233

The Western Division First Mortgage will be a direct first lien on all the existing railroads, equipment and track-[fol. 441] age rights now subject to the lien of the Rio Grande Junction First Mortgage and the Rio Grande Western First Trust Mortgage, together with a direct first lien on that portion of the main line of the D&RGW now subject to the lien of the D&RG Consolidated Mortgage lying between Dotsero and Rifle, and between Grand Junction and Crevasse, all in the state of Colorado.

Bonds may be issued under this mortgage up to, but not in excess of $40,000,000. The balance not presently issued under the plan may be issued for not to exceed 75% of the

cost of additions and betterments to the mortgaged property, or in exchange for First Mortgage Bonds of The Western Pacific Railroad Company in connection with the extension of the lien of the mortgage over the entire line of that company in the event of a possible future consolidation. Such additional bonds may be of various series, all equally secured as to principal and interest, but may have different interest rates, maturities and other provisions.

The Series A Bonds presently to be issued will mature in 40 years from date of issue, and bear interest which will be a fixed charge at the rate of 3½% per annum. They will be redeemable in whole or in part upon 30 days notice at any interest date, and at 60 days notice at any other date, at par plus accrued interest.

[fol. 442] *First and Refunding Mortgage Bonds, Series A (Including Pledged Bonds)* $37,405,730

It is proposed that the company also execute a First and Refunding Mortgage, which will be a direct lien on all the existing standard gauge railroads, equipment and trackage rights of the companies proposed to be consolidated, subject only to the lien of the Western Division First Mortgage.

The mortgage will be open-end for future financing, and will permit the issuance of various series of bonds, all equally secured as to principal and interest, which may have different interest rates, maturities and other provisions. Additional First and Refunding Bonds may be issued to finance not to exceed 75% (except as otherwise provided in the plan) of the cost of additions and betterments to the company's property not otherwise financed, to refund the $2,217,000 First Mortgage 5% Income Bonds of The Northwestern Terminal Railroad Company, and in exchange for outstanding securities of The Western Pacific Railroad Company in the event of a consolidation with that company. First and Refunding Bonds not to exceed $40,000,000 will be reserved to refund the Western Division First Mortgage Bonds which may be issued.

The Series A First and Refunding Bonds presently to be issued will mature in 60 years from date of issue, and bear interest which will be a fixed charge at the rate of 4% per annum. They will be redeemable in whole or in part upon [fol. 443] 30 days' notice at any interest date, and on 60

days' notice at any other date, at the following prices, plus accrued interest:

105 for the first 10 years;
104 " " next 10 "
103 " " " 10 "
102 " " " 10 "
101 " " " 10 " ; and
100 thereafter.

They will be callable at par and accrued interest for the retirement fund at any time.

The bonds presently to be issued will provide, effective immediately, for a non-cumulative debt retirement fund of ½% of the maximum principal amount of First and Refunding Bonds at any previous time outstanding, plus interest on the bonds already purchased, which shall be kept alive in the fund, all to become payable annually if earned after payment of interest on the First and Refunding Bonds still outstanding. This fund shall be devoted exclusively to the retirement of Series A Bonds held by the RFC so long as any such bonds are held by that Corporation. In addition, all distributions from the Marshalling and Distributing Fund of the RCC shall be paid into the retirement fund.

Subsequent to the retirement of all First and Refunding Bonds held by the RFC, the fund shall be devoted to the purchase in the open market of the bonds at the lowest price obtainable. If no First and Refunding Bonds can be so purchased at par or less than par, the retirement fund may [fol. 444] at the option of the company be devoted to the retirement of First and Refunding Bonds through call at par, or to the retirement through purchase in the open market of General Income Mortgage Bonds. Accrued interest at time of purchase on bonds acquired for the fund shall be paid from income of the company and not from the retirement fund.

$6,000,000 First and Refunding Bonds shall be placed in the treasury of the new company upon reorganization to provide funds for 100% of the cost of additions and betterments to the property and other proper corporate purposes during the first year after reorganization, $3,000,000 of which shall be available for immediate sale, the remaining

$3,000,000 to be available for sale to the Missouri Pacific and Western Pacific as required.

Before computing the amount of income available for retirement funds on First and Refunding Bonds and charges junior thereto, there shall be set aside out of the income of the company remaining after payment of interest on the First and Refunding Bonds and senior obligations, the sum of $350,000 per annum, which may be used during the ensuing 12 months for additions and betterments to the property of the company. Any portion of this $350,000 remaining unexpended at the end of the year may be accumulated for use in future years at the discretion of the Board.

General Income Mortgage Bonds—
Series A—(Including $766,000 *of pledged bonds)* $22,063,886

[fol. 445] It is proposed that the new company also execute a General Income Mortgage (hereinafter called "General Mortgage" for convenience) which will be a lien upon all of the property upon which the First and Refunding Mortgage is a lien, subject to the liens of the Western Division Mortgage and the first and Refunding Mortgage. It shall also be a first lien upon the capital stock of the Utah Fuel Company, subject to existing rights of redemption of such stock.

The General Mortgage will be open-end for future financing, and will permit the issuance of various series of bonds, which may or may not be equally secured as to principal and interest, which may have different interest rates, maturities, conversion rights and other provisions, except that no additional series may be created prior in lien to Series A.

The Series A Bonds presently to be issued will mature 75 years from date of issue, and bear interest at the rate of 4% per annum. They will be redeemable in whole or in part at par and payable interest accrued. Any income of the company remaining after payment of interest and retirement fund on prior obligations will be used for the payment of interest on the Series A Bonds. Interest shall be paid only in multiples of ½%, fractions of ½% remaining to be paid into the general funds of the company. Interest on the Series A Bonds will be cumulative for not to exceed two years' interest.

The mortgage will provide for a debt retirement fund of ¼% of the maximum principal amount of Series A Bonds

[fol. 446] at any previous time outstanding, similar in other respects to the debt retirement fund provided for the First and Refunding Bonds. Payments into the debt retirement fund are to be made only after payment of all interest due has been made on the Series A Bonds.

In computing the income of the company available for debt retirement on the Series A Bonds there shall be deducted after payment of interest on such bonds, an annual amount representing the difference between 3% of the railway operating revenues of the new company and $350,000, which sum shall be set aside from the income of the company for additions and betterments to the company's property during the ensuing 12 months. Any balance of this fund remaining unexpended during such 12 months' period may be accumulated in the manner already described with respect to the additions and betterments fund of $350,000 per annum previously mentioned.

Both of the additions and betterments funds described may be used to defray any portion of the cost of additions and betterments to the company's property.

Registered holders of Series A Bonds shall have one vote per $1000 bond in voting for the election of two of the company's directors.

Ten-Year Collateral Notes— $1,558,000

It is proposed that the new company issue a series of one or more notes, secured by certain collateral as hereinafter set forth, maturing on or before ten years from date of [fol. 447] issue, but renewable from time to time at the option of the company for ten year periods until retired as set forth in the agreement securing the notes. The notes will be entitled only to such income as is paid by the company upon the collateral securing such notes. The notes will be cumulative to the extent of two years interest thereon, which will be at the rate of 4% per annum. Any income paid upon collateral which is in excess of the interest requirements on the notes after payment of all accumulations shall be applied to reduction of the principal amount of such notes at par and accrued interest. The notes will be callable in whole or in part at any time on thirty days' notice at par and accrued interest. Upon the retirement or call of the last of such notes the collateral securing them shall be returned to the treasury of the company.

THE DENVER AND SALT LAKE RAILWAY COMPANY
THE RIO GRANDE JUNCTION RAILWAY COMPANY
GOSHEN VALLEY RAILROAD COMPANY

Exhibit B

PROPOSED PLAN OF CONSOLIDATION AND REORGANIZATION AS OF JANUARY 1, 1937

EXISTING CAPITALIZATION	Amount	Undisturbed	Western Division First Mortgage Bonds Series A—3½% Maturity: 40 Years	First and Refunding Mortgage Bonds Series A—4% Maturity: 60 Years	General Income Mortgage Bonds Series A—4% Maturity: 75 Years	First Preferred Stock 4½% Par Value $100 per Share	Participating Preferred Stock Par Value $1 $5 Dividend (No. Shares
The Denver and Rio Grande Western Railroad Company:							
Equipment Trust Certificates	$ 1,805,000	$ 1,805,000	$	$	$	$	
R. G. J. 5s, 1939, Principal	2,000,000		(Note A) 2,000,000				
Unpaid Interest	158,333		(7.92%) 158,333				
R. G. W. Trust 4s, 1939, Principal	15,190,000		(Note B) 15,190,000				
Unpaid Interest	1,215,200		(8.00%) 1,215,200				
D. & R. G. Consol. 4s, 1936, Principal	34,125,000		(10%) 3,412,500	(15%) 5,118,750	(15%) 5,118,750	(60%) 20,475,000	
Unpaid Interest	3,412,500					(6.66%) 2,274,140	
D. & R. G. Consol. 4½s, 1936, Principal	6,382,000		(10%) 638,200	(15%) 957,300	(15%) 957,300	(60%) 3,829,200	
Unpaid Interest	717,975					(7.50%) 478,469	
R. G. W. Consol. 4s, 1949, Principal	15,080,000			(40%) 6,032,000	(60%) 9,048,000		
Unpaid Interest	1,357,200				(8.25%) 1,244,836		
D. & R. G. W. Ref. and Impr. 5s, 1978, Principal	12,000,000			(15%) 1,800,000	(40%) 4,800,000	(45%) 5,400,000	
Unpaid Interest	1,350,000					(6.27%) 751,809	
Reconstruction Finance Corp. Debt, 4%, Principal	10,691,850			10,691,850			
Unpaid Interest	626,108			391,150			
The Railroad Credit Corp. Debt, 1½% (Est.)	328,000		66,000	(Note C) 179,000	83,000		
Bank Debt, 5%, Principal (Note D)	1,500,000			792,000	708,000		
Unpaid Interest	93,948				58,000		
D. & R. G. W. General 5s, 1955, Principal	29,808,000						29
Unpaid Interest	12,544,200						3
Preferred Stock	16,445,600					(50%)	8
D. & R. G. W. Ref. and Impr. 6s, 1974, Principal	2,000,000						
Unpaid Interest	270,000						
Common Stock	Shs 300,000						
Total Capitalization		1,805,000	22,680,233	25,962,050	22,017,886	33,208,618	41
Charges		68,408	793,808	1,038,482	860,715	1,494,388	$ 2,0
Charges—Cumulative		68,408	862,216	1,900,698	2,781,413	4,275,801	$ 6,3
The Denver and Salt Lake Railway Company:							
First 4s, 1960, Principal	1,500,000			(101%) 1,515,000			
Income 6s, 1960 (with public), Principal	9,734,000			(102%) 9,928,680			
Stock (with public)	Shs 460				46,000		
Total Capitalization				11,443,680	46,000		
Charges				457,747	1,840		
Charges—Cumulative				457,747	459,587	459,587	$ 459
The Denver and Rio Grande Western Railroad Company—The Denver and Salt Lake Railway Company							
Grand Total Capitalization		1,805,000	22,680,233	37,405,730	22,063,886	33,208,618	41
Charges		68,408	793,808	1,496,229	882,555	1,494,388	$ 2,0
Charges—Cumulative		68,408	862,216	2,358,445	3,241,000	4,735,388	$ 6,8

Note A—Also offered 4.375% or $87,500 in cash to compensate for loss of interest to maturity.

Note B.—Also offered 1.25% or $189,875 in cash to compensate for loss of interest to maturity.

Note D.—Is offered a 10-year income note in the face amount of $1,558,000 secured by $792,000 principal amount of First and Refunding Bonds, by $766,000 principal amount of Income 4s, and by other collateral, all as set forth in the plan.

Not

July 28, 1936.

Filed July 29, 1936 - 12 noon - Charles W. Bishop, Clerk

First Preferred Stock (excl. pledged stock) $33,208,618

It is also proposed that the new company issue First Preferred Stock which will permit additional issues for future financing, and will be issuable in various series which may have different dividend rates, conversion rights, and other provisions. The First Preferred Stock presently to be issued will have a par value of $100 per share, and will be entitled to annual non-cumulative dividends of 4½%.

It will be redeemable in whole or in part at par plus payable dividends declared.

Holders of First Preferred Stock shall have one vote [fol. 448] per share in voting for the election of two of the company's directors.

Participating Preferred Stock— 413,842 *shares*

It is also proposed that the new company issue Participating Preferred Stock which will permit additional issues for future financing and will be issuable in various series, which may have different dividend rates and other provisions. The Participating Preferred Stock presently to be issued will have a par value of $1 per share and will be entitled to annual non-cumulative dividends of $5 per share, and will also participate equally with the common stock after dividends of $4 per share on the latter. It will be redeemable in whole or in part at $100 per share, plus payable dividends declared, and will be entitled to $100 in liquidation.

The additions and betterments funds heretofore described will operate prior to the appropriation of the income of the company for preferred stock dividends regardless of whether there are any General Mortgage Bonds outstanding or not.

Holders of preferred stock shall have one vote per share in voting for the election of two of the company's directors.

Common Stock— 200,000 *shares*

The new common stock will have a par value of $1 per share, and will be entitled to elect 9 of the company's directors, one of whom shall be the president.

[fol. 449] Board of Directors

The Board of Directors of the Company shall consist of 15 members. As outlined above, two of these shall be

elected by the registered holders of General Income Mortgage Bonds, Series A; two by the holders of First Preferred Stock; two by the holders of Participating Preferred Stock; and nine by the holders of common stock. One of the directors elected by the common stock shall be the president of the new company.

IX

Treatment of Existing Securities and Obligations

The proposed treatment of existing securities and obligations is outlined on the attached sheet, marked Exhibit B.

Equipment Trusts—		$1,805,000
Equipment trusts are left undisturbed.		
RGJ First 5s, 1939—		$2,000,000
RGW First Trust 4s, 1939—		
Outstanding	$15,190,000	
Pledged RFC	10,000	$15,200,000

New Western Division 3½s are allocated for all of these bonds, together with all of the unpaid interest on such obligations. In addition, holders of these bonds are offered cash to compensate for the difference between 3½% per annum and the present interest rate on these bonds to maturity.

The interest on bonds of these issues was earned approximately three times over during the 12 months ended [fol. 450] June 30, 1935, and it is believed that the creation of this Western Division Mortgage, whose principal lien is on the line securing these two bond issues, will continue to give these bondholders a security as good from an earnings standpoint as that which they now hold, and at the same time meet the problems incident to the early maturity of these bonds presently outstanding.

D&RG Consol 4s *and* 4½s, 1936—			
Outstanding—4s	$34,125,000		
4½s	6,382,000		$40,507,000
Pledged—4s—RFC	783,000		
RCC	662,000		1,445,000
			$41,952,000

These bonds are a lien, among other things, on the main line between Dotsero and Rifle, Colorado, and Grand Junction and Crevasse, Colorado, totalling about 63 miles, which goes to make up part of the continuous main line subject to the lien of the Western Division Mortgage. Western Division Mortgage Bonds issued to the RGW Trust 4s are at the rate of approximately $60,000 per mile of main line. Applying this same rate to the mileage contributed by the D&RG Consols permits the issuance of approximately 10% of the principal amount of the latter bonds in the new Western Division 3½% Bonds.

In allocating First and Refunding Bonds to these bondholders and to other issues it has been assumed that the [fol. 451] fixed charges should have been covered approximately 1.45 times in 1935, which would have been approximately 1.25 times during the three years 1932-1934, inclusive. The earnings available for interest on the D&RG Consols in 1935 were $663,690 (all such earnings figures were actually calculated on the basis of the year ended June 30, 1935, and were substantially the same as for the calendar year 1935). This figure includes an adjustment to compensate for an abnormally low potato crop in the San Luis Valley in the year ended June 30, 1935. This crop was much more nearly normal during the calendar year, and is ordinarily a traffic not subject to violent fluctuations. The figure also includes an adjustment for backshop and heavy repair facilities subject to the lien of this mortgage and used to repair equipment used on other mortgage divisions.

Applying the desired earnings coverage in 1935 will permit the issuance of 15% of First and Refunding 4s to this issue.

In allocating income bonds to the D&RG Consols and to other issues it has seemed desirable to limit the amount of income bonds outstanding to a total on which the full interest could have been paid during the calendar year 1935 if the companies had been consolidated under corporate management. On this basis 10% of Income Bonds could be allocated to the holders of D&RG Consols. This amount is affected by the controversy which exists as to the respective liens on a portion of the company's equipment. The position taken by the Debtor is as heretofore outlined. If [fol. 452] the position which the Debtor understands to be that of the D&RG Consols should be recognized, these bonds

ag rs	General Income Mortgage Bonds Series A—4% Maturity: 75 Years		First Preferred Stock 4½% Par Value $100 per Share		Participating Preferred Stock Par Value $1— $5 Dividends (No. Shares)		Common Stock Par Value $1 per Share (No. Shares)
	$		$				
18,750	(15%)	5,118,750	(60%)	20,475,000			
			(6.66%)	2,274,140			
57,300	(15%)	957,300	(60%)	3,829,200			
			(7.30%)	478,469			
12,000	(60%)	9,018,000					
	(8.25%)	1,244,836					
00,000	(40%)	4,800,000	(45%)	5,400,000			
			(6.27%)	751,809			
01,850							
01,150							
9,000		83,000					
12,000		708,000					
		58,000					
						298,060	
						33,534	
					(50%)	82,228	
							200,000
0,050		22,017,886		33,208,618		413,842	200,000
5,482		880,715		1,494,388	$	2,069,210	
0,698		2,781,413		4,275,501	$	6,345,011	
5,000							
8,680							
		46,000					
3,680		46,000					
7,747		1,840					
7,747		459,587		459,587	$	459,587	
1,730		22,063,886		33,208,618		413,842	200,000
6,229		882,555		1,494,388	$	2,069,210	
8,445		3,241,000		4,735,388	$	6,801,598	

rest to maturity.

cured by $792,000 principal amount of First and other collateral, all as set forth in the plan.

Note C.—Includes $73,000 for 60% of Distributive Share.

Clerk

7-30

would be entitled to 15% in Income Bonds. The owners of the property also own $2,000,000 principal amount of Refunding and Improvement 6s of 1974, whose treatment will be later discussed. The owners of these bonds, desirous of composing differences between the other classes of bondholders to the greatest extent possible, are willing as a part of this plan to surrender for cancellation the $2,000,000 Refunding and Improvement 6s of 1974 as a contribution by the stockholders to the bondholders, and to let the earnings on such bonds apply to increase the percentage of Income Bonds allocable to the D&RG Consols. Such handling will permit these bonds to be offered 15% in Income 4s, to which their position as to equipment liens would entitle them, and at the same time permit treatment of the Refunding and Improvement Bonds on the basis of the maximum equipment lien which the Debtor believes them to possess.

The remaining principal amount of these bonds, 60%, are offered First Preferred Stock, the next ranking security, together with capitalization of unpaid interest. In this, as in other instances, unpaid interest has been capitalized fully to the extent accrued prior to the date of trusteeship, and has been capitalized to the extent estimated to be earned subsequent to such date. This treatment is believed to be not only fair and equitable, but all that it is legally permissible to accord under the provisions of Section 77 of the Bankruptcy Act.

[fol. 453] *RGW Consols* 4s, 1949

Outstanding	$13,080,000	
Pledged—RFC	3,395,000	$16,475,000

Net earnings available for interest in 1935 were a deficit of $228,799 after including an allowance for the stock of the Utah Fuel Company which is subject to the lien of this mortgage. The bonds are, however, a second lien upon the mileage which is subject to the RGW Trust 4s of 1939, which showed a net income available for interest in 1935 of approximately $1,871,560. This second lien position will permit the issuance within the desired earnings ratio of 40% in First and Refunding 4s to the holders of these bonds, with the remaining 60% of their principal, plus unpaid interest, allocated in Income Bonds.

D&RGW Refunding and Improvements

5s, 1978	Outstanding		$12,000,000
	Pledged RFC	$4,385,000	
	Pledged Bank	6,096,000	10,481,000
			22,481,000
6s, 1974	Outstanding		2,000,000
			$24,481,000

The direct net income of these bonds available for interest in 1935 was $40,490. The bonds are also a second lien on equipment subject to equipment trusts; a second collateral lien on the earnings of the RGJ, and a third lien on the mileage subject to the RGW Trust 4s of 1939. Earnings flowing to the Refunding and Improvement Bonds from these liens permits the issuance of 12.99% in [fol. 454] First and Refunding 4s (bonds in the hands of the public are offered 15%), 40% in Income 4s, and 45% in First Preferred Stock, together with capitalization of unpaid interest in the last named security.

The $2,000,000 of 6s, 1974, secured by the same mortgage, owned by the present common stockholders of the Debtor, are to be canceled as part of this plan and the earnings thereon distributed to the bondholders as heretofore stated.

RFC Debt— $10,691,850

This debt is secured by a first lien on all of the outstanding securities of the subsidiary company which owns the Dotsero Cutoff, and by more than 99% of the capital stock of the D&SL, together with the following other securities:

RGW Consol 4s	$1,395,000
D&RG Consol 4s	783,000
Refunding and Improvement 4s	4,385,000
D&SL Income 6s	1,266,000

and several other minor items.

Although, as stated, the earnings on this collateral will not justify offering the RFC 100% in new First and Refunding 4s, it is believed that the Strategic importance of the Cutoff route to the consolidated company dictates such an offer from the point of view of practicality, and this offer is therefore made.

[fol. 462]. In the Matter of the Reorganization of the Denver and Rio Grande Western Railroad Company, Debtor

Before the Interstate Commerce Commission

Finance Docket No. 11,062

Before the District Court of the United States for the District of Colorado. Bankruptcy Docket No. 8669

The Denver and Rio Grande Western Railroad Company

The Denver and Salt Lake Western Railroad Company, The Denver and Salt Lake Railway Company, The Rio Grande Junction Railway Company, Goshen Valley Railroad Company

Plan of Reorganization and Unification

Effective Date, January 1, 1937.
Proposed by Insurance Group Committee.

[fol. 463] The Denver and Rio Grande Western Railroad Company

The Denver and Salt Lake Western Railroad Company, The Denver and Salt Lake Railway Company, The Rio Grande Junction Railway Company, Goshen Valley Railroad Company

Plan of Reorganization and Unification

I.

Introductory Statement

Insurance Group Committee (hereinafter sometimes called the Committee) is the representative of a group of mutual life insurance companies owning substantial amounts of underlying bonds of The Denver and Rio Grande Western Railroad Company (hereinafter sometimes called the Denver) and of The Rio Grande Junction Railway Company (hereinafter sometimes called the Junction). The members of the Committee are George S. Van Schaick, Chairman; Jacob A. Barbey, Homer M. Chapin, Harry C. Hagerty,

In consideration of the offer of First and Refunding 4s for the entire amount of its debt, the RFC would agree as [fol. 455] part of the plan to underwrite the refunding of the $1,500,000 First Mortgage 4s of the D&SL in new First and Refunding 4s at 101 and the refunding of $9,734,000 Income 6s of the D&SL outstanding in the hands of the public in new First and Refunding 4s at 102.

These operations, together with an offer of Income 4s for the small amount of remaining outstanding capital stock of the D&SL, would result in the retirement of all of the securities of that company and their replacement by securities of the new consolidated company.

RCC Debt— $328,000

Based strictly on the collateral behind this loan, and valuing the balance due on the company's distributive share in the Marshalling and Distributing Fund at 60c on the dollar in First and Refunding 4s, an offer is made as follows:

Western Division 3½s	$66,000
First and Refunding 4s	179,000
Income 4s	83,000
	$328,000

Bank Debt— $1,500,000

For this debt, which is owed to the Chase National Bank, it is proposed to offer Ten-Year Collateral Notes covering the face amount of debt, plus capitalizable interest, secured by those securities of the new company issuable for the collateral securing the present loan if exchanged under the provisions of the plan. This loan is secured by $6,096,000 [fol. 456] principal amount of Refunding and Improvement 5s of 1978. As the plan stands at present, the Ten-Year Notes offered to the Chase Bank would be secured by $792,000 principal amount of First and Refunding 4s, by $2,479,000 principal amount of Income 4s, and by $2,825,000 par value of First Preferred Stock.

D&RGW General 5s, 1955— $29,808,000

These bonds are offered the next ranking security, namely, Participating Preferred Stock, for 100% of their principal, plus capitalizable interest at the rate of one share of stock

for each $100 of obligation capitalized. Unpaid accumulations on these bonds during the five year period 1924-1929 are not capitalized inasmuch as by the terms of the mortgage they do not have to be paid if remaining unpaid at the maturity of the bonds.

General Creditors—

It is proposed that unsecured general creditors be offered Participating Preferred Stock at the rate of one share of stock for each $100 of claim. Should any general creditors prove to have claims secured to such an extent as to justify better treatment than that proposed for unsecured creditors, it is proposed that the Debtor company as reorganization manager be granted authority to allocate other securities in settlement of such claims, subject to the approval of the Interstate Commerce Commission.

Preferred Stock— $16,445,600

Present Preferred stock is proposed to be exchanged for new Participating Preferred Stock on the basis of one [fol. 457] new share of Preferred for each two shares of existing preferred.

Common Stock— 300,000 sh.

The Missouri Pacific Railroad Company and The Western Pacific Railroad Corporation are the two present common stockholders. On the east, the Missouri Pacific is the most important interchange for freight business, its interchange more than equalling the combined interchange of the two next largest connecting lines. On the west, the Western Pacific Railroad Company, controlled by the Western Pacific Railroad Corporation, is also by far the most important connection from an interchange point of view. In view of this situation the Debtor believes it essential that the definite interest of these controlling carriers be retained. Under this plan each is offered 100,000 shares of new common for 150,000 shares of old common and $1,000,000 principal amount of Refunding and Improvements 6s of 1974 presently held. In addition, each of the present common stockholders will agree to purchase $1,500,000 of new First and Refunding Series A 4% Bonds at par and accrued interest.

X

Execution of Plan

Subject to any requirements of law and the requisite approval of the Court and the Interstate Commerce Commission, the principal Debtor company shall have, in ac- [fols. 458-460] cordance with the authority granted by Section 77, of the Bankruptcy Act, full and discretionary powers to make and enter into all such arrangements and to do all such things as it may deem necessary or advisable in order to promulgate, consummate, execute and make fully effective any plan of reorganization recommended, approved and certified by the Interstate Commerce Commission and confirmed by the Court. The expenses of reorganization shall be paid out of the new capital provided by this plan of reorganization.

July 28, 1936.

Fred P. Mayward, Carrol M. Shanks and Frederick W. Walker. The principal amounts of the bonds owned by the institutions so represented are as follows:

Rio Grande Junction Railway First Mortgage 5's (hereinafter sometimes called the Junction Bonds)	$698,000
Rio Grande Western First Trust 4's (hereinafter sometimes called First Trust 4's)	4,601,000
Rio Grande Western Consolidated 4's (hereinafter sometimes called the Western Consols)	4,500,000
Denver and Rio Grande Consolidated 4's (hereinafter sometimes called the Eastern Consol 4's or, collectively with the Eastern Consol 4½'s, the Eastern Consols)	5,009,000
Denver and Rio Grande Consolidated 4½'s (hereinafter sometimes called the Eastern Consol 4½'s, or, collectively with the Eastern Consol 4's, the Eastern Consols)	1,316,000
Total	$15,874,000

[fol. 464] On November 1, 1935, the Denver and The Denver and Salt Lake Western Railroad Company (hereinafter sometimes called the Salt Lake Western) filed petitions for reorganization under Section 77 of the Bankruptcy Act in the District Court of the United States for the District of Colorado. Such petitions were approved as properly filed, and Trustees appointed by that Court have subsequently administered the properties of those Companies. In July, 1936, a plan of consolidation and reorganization embracing the Denver, the Salt Lake Western, The Denver and Salt Lake Railway Company (hereinafter sometimes called the Salt Lake), the Junction and Goshen Valley Railroad Company was filed in behalf of the Denver.

For a substantial period prior to that time the Committee (and before its formal organization, representatives of some of its member institutions) had been conducting discussions and negotiations with representatives of the Denver in an effort to develop a sound and just plan of reorganization which would be acceptable to all interests involved. Various changes in the characteristics and terms of its intended plan were made by the Denver in response to positions taken by the Committee. Further changes in said proposed plan were recommended by the Denver to the Interstate Commerce Commission (hereinafter sometimes called the Commission) during the course of the hearings which have been held. Even after all such changes, however, the plan of the Denver does not, in the view of the Committee, [fol. 465] afford due recognition to the rights of the various classes of bondholders and is neither fair nor equitable, but discriminates unfairly in favor, among others, of the common stockholders under whose supervision said plan was

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

THE DENVER AND SALT LAKE WESTERN RAILROAD COMPANY
THE DENVER AND SALT LAKE RAILWAY COMPANY
THE RIO GRANDE JUNCTION RAILWAY COMPANY
GOSHEN VALLEY RAILROAD COMPANY

Exhibit B

PROPOSED PLAN OF CONSOLIDATION AND REORGANIZATION AS OF JANUARY 1, 1937

EXISTING CAPITALIZATION	Amount	Undisturbed	Western Division First Mortgage Bonds Series A—3½% Maturity: 40 Years		First and Refunding Mortgage Bonds Series A—4% Maturity: 60 Years		General Income Mortgage Bonds Series A—4% Maturity: 75 Years		First Preferred Stock 4½% Par Value $100 per Share		Participating Preferred Stock Par Value $1— $5 Dividends (No. Shares)
The Denver and Rio Grande Western Railroad Company:											
Equipment Trust Certificates	$ 1,805,000	$ 1,805,000	$		$		$		$		
R. G. J. 5s, 1939, Principal	2,000,000		(Note A)	2,000,000							
Unpaid Interest	158,333		(7.92%)	158,333							
R. G. W. Trust 4s, 1939, Principal	15,190,000		(Note B)	15,190,000							
Unpaid Interest	1,215,200		(8.00%)	1,215,200							
D. & R. G. Consol. 4s, 1936, Principal	34,125,000		(10%)	3,412,500	(15%)	5,118,750	(15%)	5,118,750	(60%)	20,475,000	
Unpaid Interest	3,412,500								(6.66%)	2,274,140	
D. & R. G. Consol. 4½s, 1936, Principal	6,382,000		(10%)	638,200	(15%)	957,300	(15%)	957,300	(60%)	3,829,200	
Unpaid Interest	717,975								(7.50%)	478,469	
R. G. W. Consol. 4s, 1949, Principal	15,080,000				(40%)	6,032,000	(60%)	9,048,000			
Unpaid Interest	1,357,200						(8.25%)	1,244,836			
D. & R. G. W. Ref. and Impr. 5s, 1978, Principal	12,000,000				(15%)	1,800,000	(40%)	4,800,000	(45%)	5,400,000	
Unpaid Interest	1,350,000								(6.27%)	751,809	
Reconstruction Finance Corp. Debt, 4%, Principal	10,691,850					10,691,850					
Unpaid Interest	626,108					391,150					
The Railroad Credit Corp. Debt, 1½% (Est.)	328,000			66,000	(Note C)	179,000		83,000			
Bank Debt, 5%, Principal (Note D)	1,500,000					792,000		708,000			
Unpaid Interest	93,948							58,000			
D. & R. G. W. General 5s, 1955, Principal	29,808,000										298,08
Unpaid Interest	12,544,200										33,53
Preferred Stock	16,445,600								(50%)	82,22	
D. & R. G. W. Ref. and Impr. 6s, 1974, Principal	2,000,000										
Unpaid Interest	270,000										
Common Stock	Shs 300,000										
Total Capitalization		1,805,000		22,680,233		25,962,050		22,017,886		33,208,618	413,84
Charges		68,408		793,808		1,038,482		880,715		1,194,388	$ 2,069,21
Charges—Cumulative		68,408		862,216		1,900,698		2,781,413		4,275,801	$ 6,345,01
The Denver and Salt Lake Railway Company:											
First 4s, 1960, Principal	1,500,000				(101%)	1,515,000					
Income 6s, 1960 (with public), Principal	9,734,000				(102%)	9,928,680					
Stock (with public)	Shs 460							46,000			
Total Capitalization						11,443,680		46,000			
Charges						457,747		1,840			
Charges—Cumulative						457,747		459,587		459,587	$ 459,58
The Denver and Rio Grande Western Railroad Company—The Denver and Salt Lake Railway Company											
Grand Total Capitalization		1,805,000		22,680,233		37,405,730		22,063,886		33,208,618	413,84
Charges		68,408		793,808		1,496,229		882,555		1,194,388	$ 2,069,21
Charges—Cumulative		68,408		862,216		2,358,445		3,241,000		4,435,388	$ 6,501,59

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Exhibit B

S OF JANUARY 1, 1937

ng rs	General Income Mortgage Bonds Series A—4% Maturity: 75 Years		First Preferred Stock 4½% Par Value $100 per Share		Participating Preferred Stock Par Value $1— $5 Dividends (No. Shares)		Common Stock Par Value $1 per Share (No. Shares)
	$		$				
18,750	(15%)	5,118,750	(60%)	20,475,000			
			(6.66%)	2,274,140			
57,300	(15%)	957,300	(60%)	3,829,200			
			(7.50%)	478,469			
82,000	(60%)	9,018,000					
	(8.25%)	1,244,836					
00,000	(40%)	4,800,000	(45%)	5,400,000			
			(6.27%)	751,809			
01,850							
01,150							
79,000		83,000					
82,000		708,000					
		58,000					
						298,080	
						33,534	
					(50%)	82,228	
							200,000
2,050		22,017,886		33,208,618		413,842	200,000
8,482		880,715		1,494,388	$	2,039,210	
0,698		2,781,413		4,275,801	$	6,315,011	
5,000							
8,680							
		46,000					
3,680		46,000					
7,747		1,840					
7,747		459,587		459,587	$	459,587	

proposed. It has, therefore, seemed to the Committee that it should propose a plan which would be fair to all interests and provide for equitable participation of the various classes of creditors and stockholders, while making provision for the future of the companies involved which would best promote the earning power and financial strength of the several properties and their ability to continue and improve the public service rendered by them. To that end this Plan of Reorganization and Unification (hereinafter sometimes called the Plan) is being filed by the Committee with the Commission and the Court.

The statements and figures herein contained with respect to the capitalization and earnings of the several companies embraced within the Plan have been taken from information supplied by the Denver, but no estimate, statement, explanation or suggestion contained in the Plan, or in any circular that may hereafter be issued by or under the authority of the Committee or of the Reorganization Committee hereinafter named, is intended or is to be accepted as a representation.

[fol. 368]

II

Capitalization Outstanding as of January 1, 1937

(Including Unpaid Interest)

		Amount	Fixed Annual Interest
The Denver and Rio Grande Western Railroad Company:			
Equipment Trusts	$1,805,000	$1,805,000	$68,408
Rio Grande Junction First Mortgage 5's due 1939 (Junction Bonds)			
Principal	2,000,000		100,000
Unpaid Interest	158,333		
Total		2,158,333	
Rio Grande Western First Trust 4's of 1939 (First Trust 4's)			
Principal	15,190,000		607,600
Unpaid Interest	1,215,200		
Total		16,405,200	
(In addition $10,000 principal amount of such bonds are pledged with Reconstruction Finance Corporation)			
Denver and Rio Grande Consolidated 4's due 1936 (Eastern Consol 4's)			
Principal	34,125,000		1,365,000
Unpaid interest	3,412,500		
Total		37,537,500	

[fol. 467]

		Amount	Fixed Annual Interest
(In addition, $783,000 principal amount of such bonds are pledged with Reconstruction Finance Corporation and $662,000 principal amount with The Railroad Credit Corporation)			
Denver and Rio Grande Consolidated 4½'s due 1936 (Eastern Consol 4½'s)			
Principal	6,382,000		287,190
Unpaid interest	717,975		
Total		7,099,975	
Rio Grande Western Consolidated 4's due 1949 (Western Consols)			
Principal	$15,080,000		$603,200
Unpaid interest	1,357,200		
Total		$16,437,200	
(In addition $1,395,000 principal amount of such bonds are pledged with Reconstruction Finance Corporation)			
Denver and Rio Grande Western Refunding and Improvement 5's due 1978 (hereinafter sometimes called the R&I's or R&I 5's)			
Principal	12,000,000		600,000
Unpaid interest	1,350,000		
Total		13,350,000	

[fol. 468]

		Amount	Fixed Annual Interest
(In addition, $6,096,000 principal amount of such bonds are pledged with The Chase National Bank of the City of New York and $4,385,000 principal amount with Reconstruction Finance Corporation)			
Denver and Rio Grande Western Refunding and Improvement 6's due 1974 (hereinafter sometimes called the R&I 6's)			
Principal	2,000,000		120,000
Unpaid interest	270,000		
Total		2,270,000	
Denver and Rio Grande Western General Mortgage 5's due 1955 (hereinafter sometimes called the General Mortgage Bonds)			
Principal	29,808,000		1,490,400
Unpaid interest	12,544,200[1]		
Total		42,352,200	
Notes (4%) to Reconstruction Finance Corporation (hereinafter called RFC)			
Principal	10,691,850		427,674
Unpaid interest	626,108		
Total		11,317,958	
Notes (1½%) to The Railroad Credit Corporation (hereinafter called RCC)	$297,409	$297,409	$4,920
Notes (5%) to The Chase National Bank of the City of New York (hereinafter called the Chase Bank)			
Principal	1,500,000		75,000
Unpaid interest	93,948		
Total		1,593,948	

[1] $7,452,000 of this amount represents interest for the five year period ending February 1, 1929, during which time the payment of interest was contingent.

[fol. 469]

		Amount	Fixed Annual Interest
Total Funded Debt (excluding pledged bonds) and Notes		$152,624,723	$5,749,392
Preferred Stock—Par Value	$16,445,600		
Common Stock—Shares	300,000		
The Denver and Salt Lake Railway Company:			
First Mortgage 4's due 1950		$1,500,000	$60,000
Income Mortgage 6's due 1960		9,734,000	584,040[2]
(In addition, $1,266,000 principal amount of such bonds are owned by the Denver and pledged with RFC)			
Common Stock—Shares	50,000		
(460 of these shares are outstanding in the hands of the public and the residue are owned by the Denver and pledged with RFC)			
The Denver and Salt Lake Western Railroad Company:			
Common Stock—Shares	36,310[3]		
System Total Funded Debt (excluding pledged bonds) and Notes		$163,858,723	$6,393,432[2]

[2] Interest of $584,040 on the Salt Lake Income Bonds (which is included in the system total) is contingent.

[3] All such shares are owned by the Denver and pledged with RFC. In addition the Salt Lake Western is obligated on notes to RFC, which are included in the aforesaid indebtedness by the Denver to RFC.

GENERAL NOTE: There are likewise outstanding $2,217,000 principal amount of The Northwestern Terminal Railroad Company First Mortgage Income 5's; the properties of such company are operated by the Salt Lake under lease, and interest on its bonds may become a fixed charge by way of rental in the event of a merger or consolidation of the Salt Lake and the Denver. Rental under the lease of the Moffat Tunnel held by the Salt Lake includes a part of the principal and interest of the bonds issued to finance the construction of such tunnel. In addition, the Denver is liable with respect to obligations of terminal companies at Denver and Salt Lake City.

[fol. 470]

III

Earnings of the Properties

The statements filed by the Denver with the Interstate Commerce Commission indicate that the Total Operating Revenues and Net Available for Interest of the companies embraced within the Plan on a consolidated basis for the years 1930-35, inclusive, were (after the correction stated below) as follows:

Year	Total Operating Revenues	Net Available for Interest
1930	$32,944,819	$8,060,527
1931	25,787,653	6,139,950
1932	19,476,090	3,560,344
1933	18,770,125	3,930,497
1934	20,866,856	3,477,744
1935	23,179,112	3,459,100

In the above table Net Available for Interest for the year 1935 has been corrected by the elimination of a charge made by the Denver in said statements in the sum of $263,884 purporting to represent "Federal Retirement Act Contributions". This correction has been made because of the fact that no such contributions were required in that year.[1]

The statements so filed by the Debtor do not show the earnings of the consolidated properties for the year 1936. The available reports show that the Total Operating Revenues of the properties embraced in the Plan upon a consolidated basis for the year 1936 amount to $28,456,258. [fol 471] Certain of the operating expenses of the properties were distorted in that year by large expenditures being made by the Trustees of the Denver for improvements. Applying the average operating ratio for the ten year period 1926-1935, inclusive, to the Total Operating Revenues of the Denver for the year 1936 and taking the other items in the income accounts as reported for the year 1936 would give a net available for interest in that year of $4,557,748 on a consolidated basis.

The foregoing figures produce an average Net Available for Interest for the four years 1932-1935 of $3,606,921; for the five years 1932-1936 of $3,797,086; for the two years 1935-1936 (the only two calendar years of operation since the opening of the Dotsero Cut-Off) of $4,008,424.

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[1] It would appear that this sum is composed of $175,625 charged to operations in 1934 and credited to profit and loss in 1935 and $88,259 charged to operations in the first three months of 1935 and credited to operations in April, 1935.

pari passu with the lien of the new Income Mortgage except as in the new Income Mortgage otherwise expressly provided unless the creation of such mortgage or lien be consented to by the holders of all outstanding new Income Bonds.

Available Net Income and Capital Fund

The First Mortgage and the Income Mortgage shall make appropriate provision for the determination and application of Available Net Income and a Capital Fund as follows:

Available Net Income shall be determined for each period of six months ending June 30th or December 31st (hereinafter called Income Periods) beginning with the Income Period ending June 30, 1937.

Available Net Income for each Income Period shall equal the remainder left after deducting from the income of the New Company arising from the properties subject to the lien of the New Income Mortgage and from the properties [fol. 485] or systems acquired by the New Company under the Plan which is available for fixed charges for such Income Period (determined in accordance with the accounting rules at the time in force of the Commission or other analogous Federal authority having jurisdiction at the time, or, to the extent not covered by such accounting rules, in accordance with sound accounting practice) such part of the following amounts as arise in the operation of, or are incident to, the aforesaid properties, namely:

(a) All fixed charges (determined in accordance with such accounting rules or practice) of the New Company accrued during such Income Period; provided, however, that if in any Income Period the New Company shall fail to earn such fixed charges, the amount of such deficit may in the discretion of the Board of Directors of the New Company (and shall in the event that funds shall have been borrowed because of such deficit to pay such fixed charges) be paid out of income for the next ensuing Income Period or Periods before determining Available Net Income, and any income so deducted before determining Available Net Income shall be first used to retire any indebtedness that may have been incurred for the purpose of paying such fixed charges;

(b) All other charges properly deductible from such income in determining income after fixed charges under such accounting rules or practice, but excluding contingent interest and sinking fund requirements hereinafter provided for; and

(c) The sum, subject to the proviso set out in paragraph [fol. 486] number (5) next hereinbelow, of 2½% of total railway operating revenues (determined in accordance with such accounting rules or practice) of the New Company for such Income Period subject to a maximum limit of $375,000, which sum shall constitute the Capital Fund and be disposed of as hereinafter set forth. Any amount by which such income in any Income Period shall be inadequate to provide for the Capital Fund shall accumulate and be carried forward into the next succeeding one Income Period, but not beyond.

Available Net Income for each Income Period shall be applied to the following purposes and in the following order:

(1) All Available Net Income shall, to the extent required and subject to the provision hereinabove made for payment in even multiples of ¼% and postponement of fractional surplus, be applied to the payment on October 1st and April 1st in each year, beginning October 1, 1937, of interest on the then outstanding new Income Mortgage Bonds (excluding bonds then held in the sinking fund under the new Income Mortgage) accruing during the Income Period ending on the next preceding June 30th or December 31st, respectively, and to the payment of any unpaid accumulated interest on said bonds.

(2) Any then remaining Available Net Income shall be applied until all the new Income Bonds shall have been retired, on October 1st and April 1st in each year, beginning on October 1, 1937, to a sinking fund for such bonds [fol. 487] in an amount up to, but not exceeding, in respect of any Income Period, one-eighth of 1% of the total principal amount of Income Bonds to be issued in the reorganization plus an amount equal to interest on Income Bonds theretofore purchased or redeemed for the sinking fund, calculated at the rate paid (pursuant to the foregoing clause (1)) in respect of such Income Period, including accumulations, upon outstanding Income Bonds. Any

amount by which Available Net Income remaining for such purpose is inadequate to pay the full amount of such instalment of sinking fund shall be cumulated within the limits hereinabove stated and added to the instalment payable in the next ensuing Income Period or Periods.

(3) Any then remaining Available Net Income may be applied to any proper corporate purpose of the New Company (except dividends on the new Common Stock), including, if, and to the extent that, such dividends shall be declared by the Board of Directors of the New Company, the payment on April 1st of each year, beginning April 1, 1938, of dividends upon the new Preferred Stock in respect of the two Income Periods ending on the next preceding December 31st, to the extent not theretofore paid, and of any accrued and unpaid cumulative dividends on the new Preferred Stock and, if and to the extent so declared, to the payment on October 1st in each year, beginning on October 1, 1937, of interim dividends on the new Preferred Stock in respect of the Income Period ending on the next preceding June 30th, and of any accrued and unpaid cumulative dividends.

[fol. 488] (4) Any then remaining Available Net Income may be applied to any proper corporate purpose of the New Company, including (but only after all accrued and unpaid dividends, including accrued and unpaid cumulative dividends, on the new Preferred Stock to the next preceding June 30th or December 31st, as the case may be, shall have been paid or declared and set apart for payment) dividends on the new Common Stock.

(5) The above provisions for the deduction of the Capital Fund from the income of the New Company available for fixed charges are subject to the following provisos: If the New Company shall establish and maintain, in such manner as may be permitted or required by law or lawful regulation, an operating expense account for depreciation of its roadway and structures, then (a) the Capital Fund shall be paid from the reserve for depreciation on roadway and structures so credited in respect of the applicable Income Period to the extent that the amount so credited to said depreciation reserve shall be adequate therefor; (b) to that extent the foregoing provisions for the deduction of the Capital Fund shall cease to be operative; and (c) the New

Company shall not be entitled to withdraw any moneys from the Capital Fund until it shall have expended in the current calendar year for additions and betterments properly chargeable to capital account under said accounting rules or practice more than the amount by which its charge for depreciation of roadway and structures in such year [fol. 489] less cash expenditures incurred in the making of retirements properly charged to the depreciation reserve so credited exceeds the total paid into the Capital Fund in such year and then only to the extent of such excess.

(6) Available Net Income for any period after January 1, 1937, until the New Company comes into ownership and possession of the properties of the companies embraced in the Plan (or of their Trustees in Bankruptcy) shall be computed as if the New Company had come into such ownership and possession on January 1, 1937, and had issued, as of that date, the new securities issuable under the Plan.

The Capital Fund shall be paid to the Trustee under the new First Mortgage on October 1st and April 1st of each year and shall (subject to the proviso in the next preceding paragraph numbered (5)) be withdrawable by the New Company at any time before the next Capital Fund payment date to reimburse it for, or to provide for:

(a) All of the cost payable in cash of additions or betterments to the mortgaged property, including equipment, which are properly chargeable to capital account under said accounting rules or practice, made or to be made in the calendar year within which such payment into the Capital Fund is due, and not previously certified or thereafter to be certified to the Trustee under the new First Mortgage as the basis, in whole or in part, for the issuance of additional new First Mortgage Bonds, or the release of mortgaged property or the withdrawal of cash held by such Trustee, [fol. 490] and further provided that no expenditures so used as a basis for the withdrawal of any moneys from the Capital Fund shall be made the basis for the issuance by the New Company of any form of indebtedness or stock ranking prior to or on a parity with the new Preferred Stock of Series A; and

(b) All of the amount by which the Unfundable Purchase Price (as hereinafter defined) for new equipment exceeds Equipment Depreciation Surplus (as hereinafter defined).

In the case of equipment acquired under equipment trust obligations, the Unfundable Purchase Price shall equal the initial or down payment for such equipment. In the case of equipment acquired and paid for by the withdrawal of deposited cash under the new First Mortgage, the Unfundable Purchase Price shall equal that part of the purchase price not so withdrawable. Equipment Depreciation Surplus shall equal the remainder determined by deducting (1) the total instalments of principal of equipment trust obligations or other obligations for the deferred or serial payment of the purchase price for equipment and instalments of Equipment Sinking Fund paid out of equipment depreciation as hereinabove provided in the two next preceding Income Periods from (2) the total charges to operating expenses in such two Income Periods for depreciation of equipment. Such withdrawals from the Capital Fund shall be permitted only on the basis of such payments for equipment made or to be made in the calendar year in which the payment of such moneys into the Capital Fund was due.

[fol. 491] Any moneys not withdrawn from the Capital Fund by the New Company as aforesaid shall be accumulated in the hands of the Trustee under the new First Mortgage (subject to investment in United States Government bonds or treasury certificates) until the aggregate sum so accumulated shall equal interest requirements for a period of one year on the bonds then outstanding under the new First Mortgage; moneys so accumulated and held by said Trustee shall be designated as the Interest Reserve Fund and shall be withdrawable by the New Company only for the purpose of paying interest on bonds outstanding under the new First Mortgage in a year or years in which the net earnings of the New Company available for the payment of interest on said bonds shall be inadequate for the payment of such interest, and only to the extent of such inadequacy.

When moneys shall have accumulated in the Interest Reserve Fund to the full extent of interest requirements for a period of one year on the bonds at the time outstanding under the new First Mortgage, any moneys not withdrawn from the Capital Fund by the New Company as aforesaid shall, so long as any new Income Mortgage Bonds shall be outstanding, be paid to the Trustee under the new Income Mortgage as an additional payment into the sinking fund thereunder; and, when all the new Income Mort-

gage Bonds shall have ceased to be outstanding, be applied by the Trustee under the new First Mortgage to the re-
[fol. 492] tirement of the First Mortgage Bonds of Series A so long as any thereof shall remain outstanding and thereafter to the retirement of any First Mortgage Bonds issued in reorganization other than Series A or Series B, so long as any thereof shall remain outstanding, and thereafter to the retirement of the First Mortgage Bonds of Series B, so long as any thereof shall remain outstanding, by purchase, at the lowest prices obtainable, at public or private sale or upon calls for tender, and to the extent not so applied, then if the amount of said moneys equals or exceeds $50,000, to the redemption of said bonds, in any case at not exceeding the redemption price of said bonds. All First Mortgage Bonds so purchased or redeemed shall be cancelled and retired and no bonds shall be issued in lieu thereof. The New Company shall pay from its general funds all accrued and payable interest on any Income Mortgage Bonds or First Mortgage Bonds purchased or redeemed by the Capital Fund.

When there shall remain outstanding no Income Mortgage Bonds and no First Mortgage Bonds issued under the Plan, these provisions for the determination and application of Available Net Income and the Capital Fund shall cease to be effective.

Contingent Ten Year Collateral Notes

The Contingent Ten Year Collateral Notes will be dated January 1, 1937, and will mature January 1, 1947, subject, however, to renewal or renewals from time to time at the option of the New Company for further periods of ten
[fol. 493] years each until retired in the manner to be set forth in the agreement securing such Notes. Such Notes will bear interest at the rate of 4% per annum, payable semi-annually on October 1st and April 1st of each year, beginning October 1, 1937, but such interest will be contingent on, and payment thereof shall be limited to, the total of the interest and dividends paid by the New Company on the collateral securing such Notes. The interest will be cumulative to the maximum amount at any one time of 22½% (whether for consecutive or non-consecutive Income Periods). Any interest and/or dividends paid upon the pledged collateral in excess of interest require-

[fol. 472] IV

Proposed Capitalization of the New Company

The proposed capitalization of the New Company is as follows:

Summary	Presently Issued	Charges
Undisturbed Equipment Trusts	$1,805,000	$68,408[1]
First Mortgage Bonds, Series A	18,563,533	742,541[2]
First Mortgage Bonds, Series B	46,468,084[3]	1,858,724
Total Annual Fixed Charges		2,669,673[3]
Capital Fund		750,000[4]
Income Mortgage Bonds	28,052,011	1,262,340
Total Annual Charges (fixed and contingent) and Capital Fund		4,682,013
Income Mortgage Sinking Fund		70,130
Preferred Stock (par value)	31,434,986	1,571,749
Total Annual Charges, Capital Fund, Sinking Fund and Preferred Dividend Requirements		6,323,892
Common Stock—Class A (shares)	349,002	
Series A Warrants to purchase voting trust certificates for shares of Common Stock, Class A (see below) calling for (shares)	164,456	
Series B Warrants to purchase voting trust certificates for shares of Common Stock, Class B (see below) calling for (shares)	200,000	
Option to purchase shares of Common Stock, Class B (see below) calling for (shares)	200,000	

[1] Since January 1, 1937, the Trustees of the Denver have issued $2,175,000 principal amount of Equipment Trust Certificates, which will also be assumed by the New Company.

[2] Interest computed at 4% but may be increased to not exceeding 4½% as provided hereinbelow.

[3] Excludes provision for $6,000,000 principal amount of new First Mortgage Bonds reserved to be issued if and to the extent necessary to retire Trustees' Certificates, pay reorganization expenses and provide working capital. The amount of Series B Bonds may possibly be increased through conversion of the new Income Mortgage Bonds to be issued to RFC, as provided hereinbelow.

[4] Maximum amount; 2½% of total railway operating revenues, but not to exceed $750,000 per year.

GENERAL NOTE: Certain of the above First Mortgage Bonds, Income Mortgage Bonds and Preferred Stock are, as provided hereinbelow, to be pledged as collateral for Contingent Ten Year Collateral Notes. All references in the Plan to securities to become outstanding under the Plan include such collateral. If RFC is not paid in cash, certain additional amounts of such bonds and stock will be issued and pledged as collateral.

[fol. 473] *New First Mortgage Bonds*

The new First Mortgage will constitute a first lien, subject only to the lien of equipment trust obligations, on (1) all property owned by the companies embraced within the Plan or their Trustees in Bankruptcy as such, at the time of the effectuation of the Plan, including securities, equipment and the equity in such equipment as may be subject to equipment trust obligations, but excluding the narrow gauge railway lines of the Denver and equipment

and property essential to the operation thereof; (2) the capital stock of Utah Fuel Company; (3) all property acquired by the New Company after the date of the new First Mortgage for use on or in connection with the mortgaged property, subject only to such encumbrances or purchase money liens as may exist or be created at the time of acquisition. So far as the Reorganization Committee may deem practicable, such lien shall be in the form of direct mortgage, but it may take the form of the pledge or assignment of securities of a corporation or corporations owning property to which the lien is intended to extend.

Such new First Mortgage will contain a covenant that, to the extent permitted by law or lawful regulation, the New Company shall in each Income Period as hereinafter defined charge to operating expenses an amount for depreciation of equipment at least equal to the total amount of all instalments of principal of equipment trust obligations or other obligations for the deferred or serial pay- [fol. 474] ment of the purchase price for equipment maturing in such Income Period plus an amount equal to the instalments payable in such Income Period of the Equipment Sinking Fund (as hereinafter defined) provided for new First Mortgage Bonds and, out of the depreciation reserve so credited, will pay all such instalments as they become payable.

Such new First Mortgage will contain a covenant that the New Company will, at all times, keep the mortgaged property supplied with such amount of motive power, rolling stock and equipment (upon which the new First Mortgage shall constitute a paramount lien subject only to such purchase money liens as may be permitted by the terms thereof), and maintain the same in such condition, as may be necessary for the efficient and economical operation of the mortgaged property.

The new First Mortgage Bonds may be issued in series, all equally secured as to principal and interest, which may differ as to date of maturity, interest rate, redemption price and other terms. Additional bonds other than those to be issued under the Plan may be issued under the First Mortgage, without limit as to amount; or within such limit as may be specified in the First Mortgage, on such bases (including the refunding of debt and the deposit of cash) as shall be prescribed therein, provided that: (1) bonds may be issued on the basis of additional property (includ-

ing new equipment free from any other lien) and additions and betterments only to the extent of 75% (less prior lien debt) of the net amount of such additional property [fol. 475] or additions and betterments, computed on the basis of cost (including prior lien debt) thereof or value thereof to the New Company, whichever may be less; (2) bonds may not be issued on the basis of additional property of any kind or additions and betterments or on the basis of deposited cash unless the income of the New Company available for fixed charges in a period of twelve consecutive calendar months within the fifteen calendar months immediately preceding the date of authentication and delivery (determined in accordance with the accounting rules of the Commission or other analogous Federal authority having jurisdiction at the time, or, to the extent not governed by such accounting rules, in accordance with sound accounting practice) equals or exceeds one and one-half times the fixed charges, determined in accordance with such accounting rules or practice, of the New Company, including interest on the bonds then applied for; (3) additional property (with the exception as to equipment hereinbelow specifically provided) or additions and betterments acquired by the use of the Capital Fund hereinafter provided for shall not be eligible as a basis, in whole or in part, for the issuance of bonds and (4) no additional bonds of Series A other than those to be issued under the Plan may be issued and no bonds may be issued of any series having a maturity on or before the maturity of the bonds of Series A except bonds issued on the basis of the acquisition of new equipment or to provide cash for such acquisition. Whenever any bonds shall be [fol. 476] issued or deposited cash withdrawn on the basis of the acquisition of new equipment or to provide cash for such acquisition, an Equipment Sinking Fund shall be established under which the New Company will pay in cash to the Trustee under the new First Mortgage on January 1st and July 1st of each year an instalment of sinking fund equal to the quotient determined by dividing the principal amount of such bonds or the amount of cash so withdrawn by twice the number of years embraced in the original effective service life of such equipment (in no case to exceed fifteen) less the time elapsed since the acquisition of such equipment. Moneys held in such sinking fund shall be applied to the retirement of such bonds, or of any new

First Mortgage Bonds as to be specified in the new First Mortgage, by purchase at the lowest prices obtainable at public or private sale or upon calls for tenders or, to the extent not so applied, then if the amount of said moneys equals or exceeds $50,000, to the redemption of such bonds, in any case at not exceeding their redemption price. The new First Mortgage may provide a sinking fund with respect to additional bonds that may be issued thereunder other than those to be issued under the Plan and other than those that may be issued on the basis of the acquisition of new equipment as aforesaid. No bonds shall be issued on the basis of the acquisition of equipment under equipment trust obligations or any obligations for the deferred or serial payment of purchase price, or on the basis of the retirement of any such obligations.

[fol. 477] The new First Mortgage shall provide, within conditions and limits to be therein prescribed, for the modification and alteration thereof and of any or all supplements thereto and of the rights and obligations of the New Company thereunder and of the holders of the bonds at any time by the concurrent action of the New Company and of the holders of not less than two-thirds in aggregate principal amount of the bonds then outstanding affected by such change or modification; provided that no such change or modification shall (a) alter or impair the obligation of the New Company to pay the principal or interest of any bond at the time and place and at the rate and in the currency provided therein without the consent of the holder of such bond, or (b) permit the creation by the New Company of any mortgage or lien in the nature of a mortgage ranking prior to or *pari passu* with the lien of the new First Mortgage except as in the new First Mortgage otherwise expressly provided unless the creation of such mortgage or lien be consented to by the holders of all outstanding bonds.

It is proposed that the bonds of Series A to be issued under the Plan be dated January 1, 1937, mature January 1, 1962, and bear interest at the rate of 4% per annum, payable semi-annually. Such proposal is, however, subject to the controlling policy that such bonds be given terms and characteristics appropriate to assure to such bonds at the time of issuance a market value equal, as nearly as may be, to their principal amount; to that end the Reorganization [fol. 478] Committee shall have the power at any time before the issuance of such bonds, subject to the approval

of the Commission, to reduce the term of such bonds to not less than ten years, increase the rate of interest on such bonds to not exceeding 4½%, provide for their issuance as collateral trust bonds secured by not exceeding 115% of new First Mortgage Bonds, or adopt any combination of such provisions as in the judgment of the Reorganization Committee may be best suited to the effectuation of said policy. No such change shall be deemed a modification of the Plan.

Each bond of Series A shall be convertible at any time on or before fifteen days prior to the date as of which such bond shall have been called for redemption into a bond of Series B having the same principal amount, with appropriate adjustment for accrued and unpaid interest to the date of conversion. The bonds of Series A shall be redeemable in whole or in part at any time on sixty days' notice by publication, at their principal amount and accrued interest.

The bonds of Series B to be issued under the Plan shall be dated January 1, 1937, shall mature January 1, 1977, shall bear interest at the rate of 4% per annum, payable semi-annually, and shall be redeemable in whole or in part at any time upon thirty days' notice by publication, at their principal amount and accrued interest, plus a premium of 5% of their principal amount if redeemed on or before January 1, 1942, 3½% of their principal amount if re- [fol. 479] deemed on or before January 1, 1947, 2½% if redeemed on or before January 1, 1952, and 1% if redeemed on or before January 1, 1972.

There shall also be issuable in or after reorganization $6,000,000 principal amount of new First Mortgage Bonds of Series B or some other series other than Series A. As many thereof as may be requisite shall be issued and sold at such price as may be approved by the Commission to provide funds to redeem all certificates then outstanding issued by the Trustees of the Denver or the Trustee of the Salt Lake Western (other than equipment trust certificates) and the residue shall be used to provide for reorganization expenses and working capital or held in the treasury of the New Company available for sale or pledge on such terms as may be approved by the Board of Directors of the New Company.

The bonds to be issued to provide for the refunding of the Salt Lake bonds, as stated below, shall also be of Series B or some other series other than Series A and shall be sold at such price as may be approved by the Commission.

New Income Mortgage Bonds

The new Income Mortgage will constitute a lien subject only to the lien of the First Mortgage and any lien that may at the time be prior to the lien of the First Mortgage, upon all property from time to time subject to the lien of the First Mortgage. Such mortgage will be closed at the [fol. 480] principal amount of bonds to be issued thereunder in the reorganization.

The new Income Mortgage bonds to be issued in the reorganization shall be dated January 1, 1937, shall mature January 1, 1987, and shall bear interest at the rate of 4½% per annum, payable semiannually. Such interest shall (within the limits of accumulation hereinafter specified) become absolutely due as a debt on its respective due dates of October 1st and April 1st in each year in respect of Income Periods ending the next preceding June 30th and December 31st, respectively. Interest on the new Income Mortgage Bonds shall, however, be mandatorily payable (except as otherwise provided by the last sentence in this paragraph) only out of Available Net Income of the New Company in respect of such Income Periods or (in the case of accumulations of interest) out of Available Net Income in respect of such Income Periods or subsequent Income Periods; the Board of Directors of the New Company may, however, in its discretion, cause the payment of interest on the new Income Mortgage Bonds out of any funds whatever that may be lawfully available therefor. Interest on the outstanding Income Bonds (excluding Bonds held in the sinking fund) shall be paid if covered by Available Net Income, and, if not fully covered thereby, then to the extent so covered, in multiples of ¼%; any Available Net Income remaining undistributed shall to the extent of the interest for such Income Period on the Income Bonds that accrued but was not paid be held in the treasury of the [fol. 481] New Company and added to the Available Net Income for the next succeeding Income Period. Interest on the new Income Bonds shall be cumulative to a maximum amount due any one time of 22½% of their principal amount

(whether such amount represents interest for consecutive or non-consecutive Income Periods). Accumulations of interest shall not bear interest. In case of accumulations of interest, the earliest due coupons or instalments of interest shall be paid first. When the principal of any of the new Income Bonds shall become payable, whether at maturity or upon redemption or by acceleration or in any other manner, or a permanent or confirmed appointment shall be made of any Trustee or Receiver for the New Company or its property, all accumulated interest on such bond or bonds shall become immediately and absolutely payable regardless of earnings.

The holders of the Income Bonds which are fully registered or registered as to principal shall have one vote per $1,000 principal amount of such bonds in the election of one member of the Board of Directors of the New Company, such right to be exercised by a majority of such bonds present or represented at any meeting to the exclusion of all other security holders. In the discretion of the Reorganization Committee the new Income Mortgage may make suitable provision for extending such voting right to include holders of bonds payable to bearer, and for the exercise thereof.

The Income Bonds shall be redeemable in whole or in [fol. 482] part, on any interest payment date, on thirty days' notice by publication, at their principal amount plus interest at the rate of 4½% per annum accrued since the next preceding 1st day of April or October, whichever is the nearer, plus any unpaid accumulated interest.

The Income Bonds will be entitled to the benefit of a sinking fund to be created by the payment on April 1st and October 1st of each year of an amount equal to one-eighth of 1% of the aggregate principal amount of such bonds to be issued in the reorganization. Such semi-annual payments shall be payable only out of Available Net Income after payment, or setting aside for payment, of all accumulations of interest and of the full interest requirements at the rate of 4½% per annum for the applicable Income Period on the Income Bonds outstanding. Such semi-annual payments for the sinking fund shall be cumulative to a maximum number at any one time of ten instalments (whether consecutive or non-consecutive instalments). Moneys in the sinking fund shall be applied to the retire-

ment of Income Bonds by purchase at the lowest prices obtainable at public or private sale or upon calls for tenders and, to the extent not so applied, then if the amount of said moneys equals or exceeds $50,000, to the redemption of such bonds, in any case at not exceeding their redemption price. The bonds so purchased or redeemed shall be held alive in the sinking fund and shall continue to bear interest for the purposes of the sinking fund, and interest payable thereon (calculated at the rate paid for the ap- [fol. 483] plicable Income Period, including accumulations, on outstanding Income Bonds) shall be added to the instalments of sinking fund above provided for. No Income Mortgage bonds shall be issued in lieu of the Income Bonds so purchased or redeemed for the sinking fund.

The new Income Mortgage shall contain a covenant by the New Company that it will not create any mortgage or other lien securing debt issued by it other than the new First Mortgage and the new Income Mortgage on any of the properties or systems acquired by it under the Plan.

The new Income Mortgage shall provide, within conditions and limits to be therein prescribed, for the modification and alteration thereof and of any or all supplements thereto and of the rights and obligations of the New Company thereunder and of the holders of the bonds at any time by the concurrent action of the New Company and of the holders of not less than two-thirds in aggregate principal amount of the bonds then outstanding; and such modification or alteration may specifically include procedural provision for ascertaining Available Net Income without the maintenance of separate books of account in the event that the New Company shall be merged or consolidated or unified with a new company to result from the reorganization of The Western Pacific Railroad Company or with any other corporation; provided, however, that no such change or modification shall (a) alter or impair [fol. 484] the obligation of the New Company to pay the principal of or accumulated interest on any bond, or to pay interest on any bond out of available Net Income as determined by the provisions hereof or by any such alteration or modification of such provisions, at the time and place and at the rate and in the currency provided in such bond without the consent of the holder of such bond, or (b) permit the creation by the New Company of any mortgage or lien in the nature of a mortgage ranking prior to or

ments on such Notes (including accumulations of interest) shall be applied to the payment of the principal amount of such Notes. Such Notes may be redeemed in whole or in part at any time on thirty days' notice at their principal amount plus full interest at the rate of 4% per annum accrued since the last preceding October 1st or April 1st, whichever is the nearer, and all unpaid accumulated interest. Upon the payment or other retirement of all such Notes, the collateral securing them shall be returned to the New Company, and the New Company shall, in the case of certificates of stock, cancel and retire the same, and in the case of bonds deliver the same forthwith to the Trustee under the indenture securing the same for cancellation and retirement; no bonds shall be issued in lieu of any bonds so cancelled and retired.

[fol. 494] *Preferred Stock*

The charter of the New Company will initially authorize 315,000 shares of new Preferred Stock, of which 314,350 shares of the par value of $100 each are to be issued in the reorganization as set out in Article V below.

Such new Preferred Stock shall be known as Series A and shall be entitled to receive dividends out of Available Net Income as hereinabove provided or out of earned surplus from prior Income Periods, when and as declared by the Board of Directors of the New Company, at the rate of 5% per annum in respect of each calendar year beginning January 1, 1937, before any dividends shall be paid or declared or set apart for payment on the Common Stock. Such dividends shall be cumulative to the extent earned in respect of any Income Period but not paid; for the purpose of the foregoing provision dividends shall be deemed to have been earned in any Income Period to the extent covered by Available Net Income in such Income Period plus payments into the Capital Fund in respect of such Income Period; but such dividends shall otherwise be non-cumulative. In any liquidation or winding up or distribution of the assets of the New Company, whether voluntary or involuntary, the new Preferred Stock of Series A shall be entitled to receive out of the assets of the New Company its par value plus any accrued and unpaid cumulative dividends thereon, before any distribution shall be made to any Common Stock, but shall not be entitled to any further participation in any

[fol. 495] such assets. The new Preferred Stock of Series A shall be redeemable in whole or in part at any time at its par value plus accumulated and unpaid dividends and proportionate dividend for the current year. Holders of the new Preferred Stock of Series A shall be entitled to one vote per share for the election of two members of the Board of Directors of the New Company, such right to be exercised by a majority of such stock present or represented at any meeting to the exclusion of all other security holders.

The new Preferred Stock of Series A shall be convertible at the option of the holder at any time on or before fifteen days prior to the date as of which such stock shall have been called for redemption, into new Common Stock of Class A, at the rate of one share of new Common Stock of Class A for each share of new Preferred Stock of Series A. If as a result of such conversions or of redemption or in any other way, the aggregate par value of the new Preferred Stock of Series A at any one time outstanding shall be reduced to $10,000,000 or less, then the holders of new Preferred Stock of Series A shall cease to be entitled to elect two members of the Board of Directors of the New Company and such Directors shall be elected by the holders of the Common Stock of Class A in addition to the Directors elsewhere herein provided for election by the holders of new Common Stock of Class A.

The New Company shall not, without the vote or consent of the holders of at least two-thirds in par value of the outstanding new Preferred Stock of Series A and in number of [fol. 496] shares of the outstanding new Common Stock of Class A, voting as separate classes, (1) create or permit to be created any mortgage or other lien upon any of its properties, excepting the new First Mortgage and new Income Mortgage hereinbefore mentioned and purchase money liens (including equipment trust liens) upon property hereafter acquired given for not more than 75% of the purchase price of such property; (2) create or issue or assume any bonds, notes or other evidences of indebtedness maturing more than two years from their date, other than those to be authenticated and delivered or assumed under the Plan, except purchase money obligations given or existing obligations assumed for not more than 75% of the purchase price of property acquired by it; (3) purchase or acquire or contract to purchase or acquire any property or system of properties

at a cost to the New Company of $5,000,000 or more in cash or principal amount or par or book value of securities; (4) enter into any lease or trackage contract calling for an annual rental to be paid by the New Company of $200,000 or more; (5) make any loans in an aggregate amount exceeding at any one time the aggregate amount of $200,000 to any subsidiary or parent or affiliated or other interest except by way of purchase of bonds of such borrower and pledge thereof under the new First Mortgage subject to the conditions and restrictions to be provided therein; (6) create any class of, or issue any, stock ranking either as to assets or as to dividends, in priority to or on a parity with, the new [fol. 497] Preferred Stock of Series A; (7) merge or consolidate with any other corporation or dispose by sale or lease or otherwise of its assets as an entirety or substantially as an entirety; or (8) make any amendment to its charter or certificate of incorporation affecting the rights or interests of such stockholders. No additional shares of Preferred Stock other than those to be issued under the Plan ranking prior to the Common Stock of Class A, and no additional shares of Common Stock of any class other than those to be issued under the Plan, shall be issued without the vote or consent of the holders of at least two-thirds in number of shares of the Common Stock of Class A then outstanding. In the event that the New Company shall be merged or consolidated or unified with a new company to result from the reorganization of The Western Pacific Railroad Company, or with any other corporation, then by vote or consent of two-thirds in par value of the Preferred Stock of Series A then outstanding procedural provision may be made for ascertaining Available Net Income without the maintenance of separate books of account, and such provision shall be binding on all the holders of stock of such Class.

New Common Stock

The charter of the New Company will initially authorize (1) 513,458 shares of new Common Stock of Class A, of no par value, all of which will be issued, or reserved for issuance upon the exercise of Warrants, in the reorganization, [fol. 498] plus (2) such number of shares as shall be necessary to provide for (a) the conversion privilege of the new Preferred Stock of Series A and (b) the treatment herein-

after stated for general creditors, all of which shall be reserved therefor.

The charter of the New Company will initially authorize 400,000 shares of Common Stock of Class B, of no par value, all of which will be reserved for issuance upon the exercise of the Warrants and Option to be issued in the reorganization.

The shares of Common Stock of Class A and Common Stock of Class B shall be identical in all particulars except: (1) on any liquidation or winding up or distribution of the assets of the New Company, whether voluntary or involuntary, the new Common Stock of Class A shall be entitled to receive out of the assets of the New Company the sum of $100 per share plus any dividends declared and unpaid before any distribution shall be made to the Common Stock of Class B, and after each share of the Common Stock of Class B shall have received an equal amount, any remaining amount shall be divided among the holders of Common Stock of Classes A and B equally share for share; (2) the voting rights of the two classes shall be as follows: the holders of shares of new Common Stock of Class A shall, in addition to the voting rights above provided, be entitled to one vote per share for the election of two members of the Board of Directors of the New Company, such right to be exercised by a majority of such stock present [fol. 499] or represented at any meeting to the exclusion of all other security holders; the holders of shares of new Common Stock of Class B shall be entitled to one vote per share on all matters except to the extent that provision is herein made for election of Directors by other classes of securities; provided, however, that unless and until 200,000 or more shares of new Common Stock of Class B shall be outstanding the holders of shares of new Common Stock of Class A shall be entitled to one vote per share on all matters except to the extent that provision is herein made for election of Directors by holders of new Income Mortgage Bonds or new Preferred Stock of Series A. In voting for Directors the holders of shares of Common Stock of Class B shall be entitled to cumulative voting rights to the extent permitted by law.

Any vote or consent by the holders of Preferred Stock of Series A or Common Stock of Class A authorizing the issuance of additional shares of stock of any kind or of securities convertible into the same may waive on such

terms and conditions, if any, as may be specified in such vote or consent, the preemptive right of all the holders of shares of stock of such Series or Class, as the case may be, to subscribe to such additional shares or securities.

All shares of Common Stock whether of Class A or of Class B, issued under the Plan, shall be issued to the Reorganization Committee as Voting Trustees, to be held by them for a period of three years from the creation of such Voting Trust subject to the following provisos: (1) the Voting [fol. 500] Trustees may at any time terminate such Voting Trust; and (2) if and when the Option hereinbelow provided for shall be exercised and the price for the stock called for thereby paid to the New Company, the Voting Trust shall be terminated within ninety days after the date of such payment. The reasonable expenses of the Voting Trustees, including counsel fees, shall be paid by the New Company.

Board of Directors

The Board of Directors of the New Company shall consist of 12 members. One member shall be elected by the holders of Income Mortgage Bonds as aforesaid, two by the holders of Preferred Stock of Series A and two by the holders of Common Stock of Class A. The remaining members shall be elected by the holders of Common Stock of Class B, and one of such remaining members shall be the president of the corporation. If no Director or Directors shall be elected by the holders of new Income Mortgage Bonds or Preferred Stock of Series A or Common Stock of Class A for any year, such Director or Directors may be elected for such year by the holders of Common Stock of Class B.

Warrants and Option

There will be issued 164,456 Warrants of Series A, each giving the holder thereof the right to purchase a Voting Trust Certificate (or after termination of the voting trust, a [fol. 501] certificate) for one share of new Common Stock of Class A at the price of $20 per share at any time within three years from the date of effectuation of the Plan, and at $30 per share within the next following three years.

There will also be issued two Warrants of Series B, each giving the holder thereof the right to purchase a Voting Trust Certificate (or after termination of the voting trust, a certificate) for 100,000 shares of new Common

Stock of Class B at the price of $30 per share at any time within three years from the date of effectuation of the Plan, and at $45 per share within the next following three years.

There shall be issued to the Reorganization Committee an assignable option (which may be exercised by one or more persons severally, in whole or in part) or options (herein sometimes called the Option) to buy at any time within three years from the date of effectuation of the Plan 200,000 shares of the new Common Stock of Class B at such price or prices (not less than $30.00 per share) as may then be fixed by the Reorganization Committee and approved by the Interstate Commerce Commission. The Reorganization Committee shall be authorized to transfer or assign such Option to any interests whom they may select as being to the greatest advantage of the New Company and its earning power, in consideration of an agreement by such transferee or transferees or assignee or assignees with the Reorganization Committee and the New Company to exercise such Option and to make payment to the New Company at a time and price to be then fixed [fol. 502] subject to the approval of the Commission; in any case, however, such transfer or assignment shall be made only to such transferee or transferees or assignee or assignees and at such price and upon such other terms and conditions as may be approved by the Commission.

Any cash proceeds received by the New Company from the exercise of the Warrants of Series A and Series B and from the exercise of the Option shall be used to redeem the new Income Mortgage Bonds then outstanding issued under the Plan to RFC; any balance then remaining shall be used to redeem an amount of new First Mortgage Bonds equal to (and of the same series as) the amount thereof that shall have been issued under the Plan upon conversion of said Income Bonds issued to RFC or to provide funds to redeem or pay certificates of indebtedness issued by the Trustees of the Denver or the Trustee of the Salt Lake Western and to provide funds for the payment of reorganization expenses and working capital and any balance then remaining shall be paid as an additional contribution to the Income Mortgage Sinking Fund.

V

Treatment of Existing Securities

The new securities above designated are to be distributed among the holders of outstanding senior bonds on the following bases for each $1,000 principal amount of bonds:

[fol. 503]

	First Mortgage Bonds	Income Bonds	Preferred Stock	Total
Junction Bonds	$1,079.10			$1,079.10
First Trust 4's	1,080.00			1,080.00
Eastern Consol. 4's	476.70	$272.80	$350.50	1,100.00
Eastern Consol. 4½'s	482.10	275.90	354.40	1,112.40
Western Consol.	511.00	579.00		1,090.00
R & I 5's	70.80	174.00	867.60	1,112.40
R & I 6's	72.20	177.50	885.10	1,134.80

The amounts of new First Mortgage Bonds distributed to the Junction Bonds and the First Trust 4's equal the principal amount of such bonds plus unpaid interest accrued thereon to January 1, 1937. In addition the Junction Bonds will receive $29.17 in cash per $1,000 principal amount to compensate for the reduction in their coupon rate to their maturity on December 1, 1939.

The amounts of new First Mortgage Bonds and Income Bonds distributable to the other bonds above listed are proportionate to the relative rights, earning power and fair value of such bonds as determined by the Committee. In making such determination the Committee, without prejudice to the assertion by it of any greater claims in the event of opposition to the Plan, but expressly reserving the right to assert such claims, has endeavoured to avoid litigation with respect to liens on equipment by not presently claiming a lien on substantial parts thereof as against the R & I Bonds. Further to promote such policy of a just and equitable plan which may avoid the expense and delay of litigation by winning acceptance from all interests, the Committee, without prejudice to the assertion by it of any different claims in the event of opposition to the Plan, but [fol. 504] expressly reserving the right to assert any such claims, has assigned to the R & I Bonds the substantial surplus of new Income Bonds issuable in respect of the collateral pledged with RFC.

In the allocations to all bonds listed in the above table interest accrued to January 1, 1937, and unpaid has been

added to principal and their sum treated as one integral debt. The par amounts of Preferred Stock distributable to such bonds equal the remainder of such principal and interest not provided for in senior securities.

The General Mortgage Bonds will receive 11.7 shares of Common Stock of Class A for each $1,000 principal amount of such bonds, being at the rate of $100 per share for the principal amount plus all unpaid interest accrued thereon to January 1, 1937, except the contingent interest accrued in the five-year period ended February 1, 1929.

RFC will be asked to underwrite the refunding of the Salt Lake bonds through the sale of new First Mortgage Bonds of Series B or some other series other than Series A at such price as may be determined by the Reorganization Committee or the New Company subject to the approval of the Commission. In consequence it is assigned the earnings on the Salt Lake stock as increased by the savings from such refunding. The earnings assigned to the Dotsero Cut-Off include an allowance designed to make adequate provision for the special factors in its situation. RFC is further assigned the securities issuable in respect of its other [fol. 505] pledged securities. On that basis it will receive 61% of the principal amount of its debt in new First Mortgage Bonds Series B and the residue of its principal and all unpaid interest accrued to January 1, 1937, in new Income Mortgage Bonds. As hereinabove provided, proceeds received from the exercise of the Warrants and the Option shall be used first to redeem the new Income Mortgage Bonds to be issued to RFC. Appropriate provision shall be made that each of the new Income Mortgage Bonds so issued to RFC shall, unless called for redemption and payment duly provided within the period of three years after the date of its issuance, be convertible, on the next following first day of April or first day of October (whichever is the closer to the expiration of said period), after not less than fifteen days prior notice, when surrendered with all unpaid appurtenant coupons, into new First Mortgage Bonds of Series B having (subject to the provision hereinbelow with respect to the issuance of scrip for fractional parts of bonds) a principal amount equal to the sum of the principal of the Income Bonds so surrendered plus interest at the rate of 4% per annum on the principal of such Income Bonds from the date of issuance thereof less all amounts

paid by way of interest on such Income Bonds on or before such conversion date. All Income Bonds surrendered on conversion shall be cancelled, and no Income Bonds shall be issued in lieu thereof. In view of the foregoing provisions, the surplus of the securities issuable in respect of [fol. 506] the collateral pledged with RFC (including second liens on other collateral) has not been assigned to it. The Income Bonds of the Salt Lake now pledged with RFC and any Salt Lake bonds held in the treasury of the Salt Lake are to be cancelled in the reorganization.

The debt to RFC remaining at the time after application of all distributions to the Denver under the Marshaling and Distributing Plan will be paid at the election of the New Company and/or the Reorganization Committee, either (1) in cash within thirty days after the date of effectuation of the Plan in full of principal and interest at 1½% to such date of effectuation, or (2) by a promissory note in the principal amount of such cash payment, payable on or before six months from such date of effectuation, bearing interest at 4% and secured by the securities issuable in respect of the bonds pledged for the existing debt. Upon the payment of such note, the collateral securing the same shall be returned to the New Company, and the New Company shall, in the case of certificates of stock, cancel and retire the same, and in the case of bonds, deliver the same forthwith to the Trustee under the indenture securing the same, for cancellation and retirement. No bonds shall be issued in lieu of any bonds so cancelled and retired.

The Chase Bank will receive Contingent Ten Year Collateral Notes as described above, under which there will be [fol. 507] pledged the securities issuable in respect of the bonds pledged to secure the existing debt.

Holders of claims against the Denver or the Salt Lake Western not having any lien and not entitled to priority of payment over any mortgage bonds, including claims for damages arising from the disaffirmance of leases or other executory contracts, whether of the Denver or of its Trustees or of the Salt Lake Western or of its Trustee, shall receive new Common Stock of Class A, on the basis of $110.00 per share, for the amount allowed by the Court on their claims, including, to the extent so allowed, interest to January 1, 1937.

Holders of Preferred Stock will receive per share one Warrant of Series A, above described, and each of the two

holders of Common Stock will receive one Warrant of Series B, above described.

Holders of the 460 shares of stock of the Salt Lake which are still outstanding in the hands of the public will receive the securities stated in the following table or in the event of their failure or refusal to accept such offer they will eventually be given such consideration, if any, as they may otherwise become entitled to receive under the law as a result of the unification.

The $2,175,000 principal amount of Equipment Trust Certificates issued by the Trustees of the Denver since January 1, 1937, and any other Equipment Trust Certificates that may hereafter be issued by them will, to the extent that [fols. 508-509] the same remain outstanding at the time the New Company comes into possession and ownership of the properties of the Denver, be assumed by the New Company in pursuance of the decrees authorizing the issuance of such certificates. Any certificates of indebtedness issued by the Trustees of the Denver or the Trustee of the Salt Lake Western and outstanding at the time of reorganization are to be redeemed or paid from the proceeds of new First Mortgage Bonds reserved for that purpose as hereinabove provided.

If interest shall be paid on any bonds or other obligations of the Denver or Salt Lake Western prior to the date when the New Company comes into possession and ownership of their properties, the amount so paid will be deducted, in the case of all outstanding bonds or obligations other than the Junction Bonds, from the amount of their total claim used as a basis for the distribution of new securities, and, in the case of the Junction Bonds, first from the amount of cash payable to the Junction Bonds as an adjustment of interest rates as aforesaid, and then from the total amount of their remaining claim.

The treatment proposed for the various securities is shown in detail in the following table:

(Here follows 1 paster, folio 510)

[fol. 510]

DISTRIBUTION OF NEW SECURITIES

Present Liabilities as of January 1, 1937	Principal Amount[1]	Accrued Interest	Undisturbed	New First Mortgage Bonds	Per Cent of Principal	New Income Bonds	Per Cent of Principal	New Preferred Stock	Per Cent of Principal	New Common Stock, Class A (Shares)	Warrants[8]
D&RGW:											
Equipment Trusts[2]	$1,805,000		$1,805,000								
Junction Bonds	2,000,000	$158,333		$2,158,333	107.91						
First Trust 4's	15,190,000	1,215,200		16,405,200[4]	108.00						
Eastern Consol 4's	34,125,000	3,412,500		16,267,780[5]	47.67	$9,310,3	27.28	$11,959,335	35.05		
Eastern Consol 4½'s	6,382,000	717,975		3,076,945[5]	48.21	1,760,9	27.59	2,262,031	35.44		
Western Consols	15,080,000	1,357,200		7,706,697[5]	51.10	8,730,503	57.90				
R&I 5's	12,000,000	1,350,000		850,230[5]	7.08	2,088,118	17.40	10,411,652	86.76		
R&I 6's	2,000,000	270,000		144,571[5]	7.22	355,058	17.75	1,770,371	88.51		
RFC	10,691,850	626,108		6,530,057[6]	61.07	4,787,901	44.78				
Chase Bank[6]	1,500,000	93,948		419,887[6]	27.39	1,009,116	67.27	5,031,597	335.44		
General Mortgage Bonds	29,808,000	5,092,200[3]								349,002	
Preferred Stock (par value)	16,445,000										164,456[9]
Common Stock (shares)	300,000										200,000[9]
D&SL:											
First Mortgage Bonds	1,500,000			11,443,675[11]							
Income 6's[12]	9,734,000										
Stock with Public (shares)	460			37,242		9,931					
Total	$14,293,464	$1,805,000		$65,031,617[10]		$28,052,011		$31,434,986		349,002	364,456[7]
Annual Fixed Charges		$89,408		$2,601,265[10]							
Annual Contingent Interest						$1,262,340					
Annual Preferred Dividend								$1,571,749			

NOTES:

[1] Excluding pledged bonds.

[2] Since January 1, 1937, the Trustees of the Denver have issued $2,175,000 principal amount of Equipment Trust Certificates, which will also be assumed by the New Company.

[3] Excluding the $7,452,000 of contingent interest accrued in the five year period ended February 1, 1929.

[4] Series A; interest computed at 4%, but may be increased to not exceeding 4½% as provided in the Plan. In addition the Junction Bonds received $58,333 because of reduction in coupon rate by 1% to their maturity.

[5] Series B.

[6] Securities issuable to the Chase Bank are to be pledged as collateral for the new Contingent Ten Year Collateral Notes.

[7] In addition an option for 200,000 shares of Common Stock of Class B is to be issued to the Reorganization Committee as and for the purposes herein provided.

[8] Series A.

[9] Series B. And see Note (7).

[10] Excludes provision for $6,000,000 principal amount of new First Mortgage Bonds reserved to be issued if and to the extent necessary to retire Trustee's Certificates, pay reorganization expenses and provide working capital. The amount of Series B Bonds may possibly be increased through conversion of the new Income Mortgage Bonds to be issued to RFC, as provided in the Plan. And see Note (4).

[11] Includes bonds to be issued to provide for the redemption premium of 1% on the Salt Lake First Mortgage Bonds and 2% on the Salt Lake Income 6's.

[12] Excludes $1,266,000 principal amount pledged with RFC, to be cancelled under the Plan.

GENERAL NOTE: The debt to RCC ($297,409 as of January 1, 1937) less subsequent distributions will, as provided in the Plan, be paid either in cash or in a six months note secured by the following collateral: $300,283 principal amount of new First Mortgage Bonds Series B, $171,858 principal amount of new Income Mortgage Bonds and $220,752 par value of new Preferred Stock of Series A. If such note is issued, upon payment thereof the collateral will be retired and cancelled. In view of such fact and the short maturity, neither the note nor the collateral is included in the above table.

[fol. 511] VI

Claims Not Affected by the Plan

The following claims are not affected by the Plan:

(a) Liabilities of the Salt Lake other than its bonds and capital stock pledged with RFC;

(b) Current liabilities of the Denver incurred in the ordinary conduct of business prior to the institution of the proceedings under Section 77 of the Bankruptcy Act, which are entitled to priority over any mortgage bonds of the Denver.

(c) Current liabilities and obligations of the Denver and the Salt Lake Western and of the Trustee(s) thereof incurred during said proceedings; and

(d) All other claims, liabilities and obligations for which no specific provision is made in the Plan.

To the extent that such claims, liabilities and obligations shall not have been paid by the Denver or the Salt Lake Western or the Trustee(s) thereof, they are to be paid in cash or assumed by the New Company. All such claims, liabilities and obligations may be adjusted or compromised and dealt with, paid or discharged by the New Company, in such manner and to such extent as may be determined by the Board of Directors of the New Company subject to the approval of the Court.

The New Company shall have the right to take such action with respect to the lease or agreement with The Northwestern Terminal Railroad Company as may be lawful under the terms thereof and may adjust, compromise, [fol. 512] deal with, pay or discharge any claim on or arising from such agreement to the extent and in the manner that may be approved by the Board of Directors of the New Company subject to the approval of the Court. Except for such agreement with The Northwestern Terminal Railroad Company and except for agreements, leases and trackage contracts between the several companies embraced within the Plan, the New Company shall be deemed to have assumed all such contracts of the Denver, the Salt Lake and the Salt Lake Western which are executory in whole or in part, including any executory leases; joint facility agree-

ments and guaranties as shall not have been disaffirmed by the Denver or the Salt Lake Western or the Trustee(s) thereof acting with the approval of the Court in said proceeding prior to the date of confirmation of the Plan, and also, with the above exceptions, any executory contracts, including any executory leases, joint facility agreements and guaranties made by the Denver or the Salt Lake Western or the Trustee(s) thereof, with the approval of the Court in said proceedings, which, by their terms, do not terminate at the conclusion of said proceedings.

VII

Provisions for Effectuation of the Plan

No holder of any security of any of the companies embraced within the Plan which is affected thereby shall be requested to accept the Plan until after a public hearing [*513] thereon shall have been held under Section 77 of the Bankruptcy Act as the same now exists or may hereafter be amended, and a report and order of the Commission approving the Plan (in its present form or as it may be modified as hereinafter provided) and finding that the Plan complies with said Section 77, or until the Court in said proceedings shall have taken such action as may be required by said Section 77 prior to the submission of a Plan thereunder to security holders or creditors, and thereafter the Plan shall be submitted to the security holders and creditors of the Denver and the Salt Lake Western in accordance with the provisions of said Section 77.

The Plan shall not be carried out until it shall have been accepted by or on behalf of the holders of at least two-thirds in principal amount of each class of the outstanding bonds of the Denver, as such bonds have been or may hereafter be classified for the purpose of the Plan by the Court in said proceedings, and by RFC, nor unless either (1) the Plan shall have been accepted by or on behalf of creditors (other than bondholders and RFC) of each class affected by the Plan as the same have been or may be classified by the Court in said proceedings, holding at least two-thirds in principal amount of the total allowed claims of such class, and by or on behalf of the stockholders of each class holding at least two-thirds of the stock of such class, or (2) provision shall have been made for protecting the interests of such nonassenting classes of creditors and stockholders as herein-

[fol. 514] after in Article VIII provided; the foregoing requirement for consent is subject, however, to the provision that the Reorganization Committee may in its discretion, subject to any requirements of the applicable law, at any time prior to the entry of a final order by the Court confirming the Plan or refusing to confirm the same, eliminate said requirement for consent as to any class of bondholders or RFC upon substituting therefor the provision for protecting the interests of such non-assenting class or classes as hereinafter in Article VIII provided.

The Committee's acceptance and proposal of the Plan are dependent upon, and limited to, the provisions stated herein as an entirety, all of such provisions being interdependent; no provision in the Plan shall be deemed an admission, relinquishment, disclaimer or waiver of any legal or equitable rights of any class of bonds as against any other class of bonds or other debt or stock. If any change of any kind in any of said provisions shall be required by the Commission or the Court or otherwise, then (1) the Committee and each member thereof reserve the right to assert any further claims without limitation, whether or not stated herein, whether the same as or different from any statement herein, and whether consistent or inconsistent with any statement herein; and (2) neither the Committee nor any member thereof shall have any further obligation or responsibility in the premises unless and until the Committee shall have accepted such change by modifying the Plan in accordance [fol. 515] therewith as herein provided. No member of the Committee who shall not have accepted or approved any such modification shall be bound by such action of the Committee.

Upon confirmation of the Plan, it shall be carried out under the supervision of a Reorganization Committee to consist of the following members: four members to be designated by Insurance Group Commitee as representatives respectively for the First Trust 4's, the Junction Bonds, the Eastern Consols and the Western Consols; one member to be designated by the Trustee under the Indenture securing the R&I Bonds as the representative for such bonds; one member to be designated by the Trustee under the Indenture securing the General Mortgage Bonds as the representative for such bonds; and one member to be designated by RFC as its representative. If no representative

shall be so designated by the three interests last aforesaid, within such period as the residue of the Reorganization Committee may determine after confirmation of the Plan, the foregoing provision for such representatives shall cease to be effective.

The Plan may be carried out either by revesting the properties of the Denver or its Trustees and the Salt Lake Western or its Trustee in either or both of said companies of by transferring said properties to some other existing corporation or to a new corporation organized for the purpose, and the execution by the corporation in which said properties shall be vested of the new mortgages and the [fol. 516] issuance by it of the new securities contemplated by the Plan. The corporation so acquiring said properties and issuing the new securities is (together with its successors and assigns) herein referred to as the New Company. The date of effectuation of the Plan as such phrase is, or other words of like import are, used herein shall mean the date on which such company shall come into possession of said properties. The Plan may be carried out with respect to the Salt Lake by either merger or consolidation or sale of assets, or in any other manner that the Reorganization Committee may determine, in all cases subject to the approval of the Commission as and to the extent provided by law.

Scrip may be issued and distributed in lieu of fractions of a share of stock or fractional parts of bonds. Holders of scrip for fractions of a share of any new stock will not be entitled to receive dividends or vote or exercise any other rights of stockholders in respect thereof. Scrip for fractional parts of bonds may be made non-interest bearing and shall be non-voting. The New Company shall, however, make appropriate provision for combining such fractions of shares of stock into whole shares and such fractional parts of bonds into whole bonds. The Reorganization Committee may make such adjustments in the allowance of interest accrued on outstanding securities as may be necessary to avoid the issuance of scrip in fractional amounts which they may deem too small for practical purposes.

The method and procedure for effectuating the Plan shall [fol. 517] be determined by the Reorganization Committee in its discretion, and the Reorganization Committee shall also determine the form, and, to the extent not inconsistent herewith, the provisions, of all mortgages, bonds, coupons,

charters, by-laws, stock certificates, voting trust certificates, purchase warrants, subscription warrants, options, acceptances, assents, certificates and all other instruments which may in the judgment of the Reorganization Committee be either necessary or desirable in connection with the effectuation of the Plan, subject, to the extent now or at the time provided by law, to the approval of the Court and/or Commission or other tribunal having jurisdiction in the premises. The Reorganization Committee or the New Company may make such arrangements for underwriting the issue and exchange or sale of the new First Mortgage Bonds to be issued to refund said Trustees' Certificates and bonded debt of the Salt Lake and pay reorganization expenses and provide working capital as they or it may deem appropriate in their or its discretion subject to the approval of the Commission and the Court in said proceedings.

The Reorganization Committee may from time to time add to its members; it may act by a majority of its members at from time to time constituted, at a meeting or in writing without a meeting. The Reorganization Committee may employ such agents, attorneys and others as it may deem desirable for the purposes of the Plan. The Reorganization Committee may from time to time delegate to others [fol. 517a] any power or discretion conferred upon it by the Plan; Any member of the Reorganization Committee may resign at any time by filing a written resignation with the Commission; the Reorganization Committee may fill any vacancies created by death, resignation or otherwise, preserving the representation on said Committee of the several interests as hereinbefore provided. The members of the Reorganization Committee shall not be liable for any action taken or failed to be taken by them in good faith, or by any person employed by the Reorganization Committee in good faith, or otherwise, except for their respective individual wilful default. The members of the Reorganization Committee shall agree to serve without compensation, but its expenses shall be reimbursed as hereinafter provided.

The Reorganization Committee may from time to time, whether before or after the acceptance of the Plan by any holders of securities or creditors, supplement or modify the Plan or adopt a substitute Plan, subject to the provisions of said Section 77, or may entirely abandon the Plan

or any modified or substitute Plan, by filing a written notice to that effect with the Commission. The term Plan as used herein shall be deemed to include any such supplemented, modified or substitute Plan.

Unless otherwise provided in said Section 77 or any order or orders of the Court in said proceeding or of the Commission, whenever notice shall be required or permitted to be given under or pursuant to the Plan, such notice shall [fol. 517b] be given by publishing a copy of such notice once in each week on any secular day of such week for two consecutive weeks in one newspaper published and of general circulation in the Borough of Manhattan, City and State of New York, and in one newspaper published and of general circulation in the City of Denver, Colorado. In addition the Reorganization Committee shall (1) in case of notices to security holders who have accepted the Plan, mail such notices, postage prepaid, to the addresses of such security holders as set forth in the acceptances signed and filed by them, and (2) in case of notices to security holders who shall not have accepted the Plan, by mailing such notices, postage prepaid, to such security holders whoses names and addresses appear in the record before the Court in said proceedings or on the books of the companies embraced within the Plan or of the New Company, as the case may be, but failure to mail any such notices, or delay in mailing any such notices, shall not invalidate the notice by publication above provided for, which alone shall be sufficient.

All expenses in connection with the Plan and its effectuation, and all costs of administration and other allowances made by the Court in said proceeding shall be paid by the New Company, subject to the provisions of said Section 77, and shall constitute a charge upon the properties of the New Company as a cost of administration prior in lien to all new securities issued under the Plan.

There shall be included in such expenses such reasonable [fol. 518] compensation for necessary services rendered and reimbursement for actual expenses incurred in connection with said proceeding and the development and effectuation of a plan (whether in connection with the negotiation of the plan heretofore proposed by the Denver in said proceedings or in connection with this Plan or in connection with any other plan that may hereafter be proposed) by the Trustees under said mortgages, the Committee or

representatives of certain of its members prior to its formal organization, the Reorganization Committee and all other parties in interest (including other representatives of creditors and security holders of the Denver, the Salt Lake Western and the Junction) and the attorneys or agents of any thereof (including the Denver, the Salt Lake Western and the Junction) as may be approved or allowed by the Commission and the Court in said proceeding.

VIII

Provision for Dissenting Creditors and Stockholders

If the holders of more than one-third in principal amount of any class of creditors (other than holders of bonds or RFC, except to the extent that the above requirement for a two-thirds consent by the holders of any such class of bonds or RFC may have been eliminated by the Reorganization Committee as above provided) of the Denver, the Salt Lake Western and the Junction, as they have been or may be classified by the court in said proceeding, or the holders of more than one-third of the shares of stock of any class of [fols. 519-521] the Denver shall not have accepted the Plan within such period as the Reorganization Committee, with the approval of the Commission and the Court, may determine, after holders of at least two-thirds in principal amount of each class of bonds affected by the Plan and on the part of which two-thirds consent shall be required by the Plan as now existing or hereafter modified, shall have accepted the Plan, the property of the Denver shall be sold at public auction at not less than a fair upset price as determined by the Court in said proceeding, and the non-assenting creditors of such class and/or the non-assenting stockholders of such class shall be entitled to receive their aliquot proportion of the proceeds of such sale, after deducting therefrom all expenses of such sale and the amount which would be required to pay in full, of principal and unpaid interest accrued to the date of such sale, all creditors whose claims are prior in lien or superior in equity to the claims of such non-assenting creditors or the rights of such non-assenting stockholders. Upon any such sale the property may be purchased for the benefit of the New Company in the reorganization by the Reorganization Committee, and in that event there shall be applied on account of the pur-

chase price therefor the distributive share of the proceeds of sale of all securities the holders of which shall have assented to the Plan and the securities, though not assenting to the Plan, of all classes of which two-thirds or more in amount have assented to the Plan.

Dated as of January 1, 1937.

Filed June 15, 1937, 2:00 P. M. Charles W. Bishop, Clerk.

[fol. 522] INTERSTATE COMMERCE COMMISSION

Finance Docket No. 11002

DENVER & RIO GRANDE WESTERN RAILROAD COMPANY REORGANIZATION [1]

Submitted Decided

Plan of reorganization for the Denver & Rio Grande Western Railroad Company, pursuant to section 77 of the Bankruptcy Act as amended, recommended.[2]

F. C. Nicodemus, Jr., and *William V. Hodges* for Denver & Rio Grande Western Railroad Company, Denver & Salt Lake Western Railroad Company and Rio Grande Junction Railway Company.

Henry W. Anderson, George D. Gibson, Leighton H. Schurbeck, Oscar R. Ewing, Harry Hoffman, Edgar J. Goodrich, Mildred E. Reeves, John B. Marsh, Edward E. Watts, Jr., Fred N. Oliver, Karl Michelet, Charles J. Nas-

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[1] This report also embraces reorganization and consolidation of the Denver & Salt Lake Western Railroad Company, secondary debtor, and the Denver & Salt Lake Railway Company, the Rio Grande Junction Railway Company, and the Goshen Valley Railroad Company, none of the last three having filed petitions under section 77.

[2] Previous reports: 212 I. C. C. 105 and 709; 217 I. C. C. 101; 224 I. C. C. 574. Orders entered without report (other than orders permitting interventions) January 21, August 8, and September 4, 1936; January 9, April 12, May 26, and October 27, 1937.

myth, John E. Benton, Clyde S. Bailey, Simon Fleishman, Clarence R. Freeman, Stanley Marsh, Robert McKinney, W. Heyward Myers, Jr., Philip B. Fisher, William Clarke [fol. 523] *Mason, Edwin S. S. Sunderland, Thomas O'G. FitzGibbon, Malcolm Fooshee, Daniel Willard, Jr., Gerald Hughes, William A. W. Stewart, Harry L. Umbarger, Erskine R. Myer, James B. Alley, C. C. McChord, C. M. Clay, W. Meade Fletcher, Jr., Arthur A. Gammell, W. C. Roper, Jr., H. Struve Hensel, Frederick W. Wood, Rodney J. Bardwell, Jr., H. H. Larimore,* and *Russell L. Dearmont,* for interveners.

REPORT PROPOSED BY M. S. JAMESON, EXAMINER

The Denver and Rio Grande Western Railroad Company and The Denver and Salt Lake Western Railroad Company, hereinafter referred to as the Denver and the Salt Lake Western, or the debtor and the secondary debtor, respectively, on November 1, 1935, filed petitions with the District Court of the United States for the District of Colorado, stating that they were unable to pay their debts as they matured and that they desired to effect a plan of reorganization under section 77 of the act of July 1, 1898, entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States," as amended. On the date of the filing of the petitions the court entered orders approving the petitions as properly filed, and, among other things, pending the appointment of trustees, authorized and directed the debtor to operate and maintain both properties, under the supervision of the court. Copies of the petitions and the orders thereon have been transmitted to the Commission by the clerk of the court. In like manner the Commission has received lists of all known creditors and stockholders of the debtors, together with copies of orders of the court determining the time within which, and the manner in which, the claims and interests of the creditors and stockholders may be filed or evidenced, and [fol. 524] the division of creditors and stockholders into classes for the purpose of the plan and its acceptance. These and other documents, similarly received, are now of record in the proceeding before the Commission.

By order entered November 18, 1935, the court appointed Wilson McCarthy and Henry Swan trustees of the debtor, and these appointments were later ratified by division 4.

By order entered December 19, 1935, the court appointed Raymond L. Sauter trustee of the secondary debtor and this appointment was likewise ratified. Upon petition of the debtors, the court on April 29, 1936, entered an order extending the time for filing a plan of reorganization from the due date under section 77(d) of the act to and including August 1, 1936. On July 29, 1936, a "Proposed Plan of Consolidation and Reorganization as of January 1, 1937" was filed with the court and with the Commission by the debtor. The plan embraced the Denver, the Salt Lake Western, the Denver & Salt Lake Railway Company, the Rio Grande Junction Railway Company, and the Goshen Valley Railroad Company.

By provisions of section 77(d), after the filing of a plan, unless such plan is found to be *prima facie* impracticable, the Commission is required to hold public hearings thereon, at which any interested party may be heard, and to render a report and order in which it may either approve or refuse to approve a plan. The plan approved may be different from any which has been proposed but it must, in the opinion of the Commission, among other things, be fair and equitable, afford due recognition to the rights of each class of creditors and stockholders, not discriminate unfairly in favor of any class of creditors or stockholders, conform to the law of the land regarding the participation of the various classes of creditors and stockholders, and be com- [fol. 525] patible with the public interest. After due notice, hearings were held in October, 1936, and in February, April, and June, 1937. At the hearing on June 15, 1937, a plan of reorganization embracing the companies covered by the debtor's plan was filed by the Insurance Group committee, an intervener, of which George S. Van Schaick was chairman. Besides this group the interveners included the trustees under certain mortgages, the Untermyer family group, the Security Research Bureau, the Chase National Bank of the City of New York, the Railroad Credit Corporation, the Reconstruction Finance Corporation, hereinafter called the Finance Corporation, and others. Briefs were filed.

Classes of Creditors and Stockholders

The district court, by order entered November 23, 1936, divided the claims and interests of the creditors and stockholders as follows: Class 1, common stock; class 2, preferred

stock; class 3, claims entitled to priority under section 77 (i); class 4, claims which would have been entitled to priority over existing mortgages or other liens if a receiver in equity had been appointed for the property; class 5, claims not included in classes 3 and 4, which are entitled to priority by virtue of the laws of any State or of the United States; class 6, bonds issued under the consolidated mortgage of the Denver & Rio Grande Railroad Company dated July 15, 1886, assumed by the debtor; class 7, bonds issued under the first-trust mortgage of the Rio Grande Western Railway Company, dated July 1, 1889, assumed by the debtor; class 8, bonds issued under the first consolidated mortgage of the Rio Grande Western Railway Company, dated April 1, 1899, assumed by the debtor; class 9, bonds issued under the first mortgage of the Rio Grande Junction Railway Company dated December 1, 1889, as-
[fol. 526] sumed by the debtor; class 10, bonds issued under the debtor's refunding and improvement mortgage dated February 1, 1924, and bonds issued under the improvement mortgage of the Denver & Rio Grande Railroad Company, dated June 1, 1888, which may be held to be pledged, under the aforesaid refunding and improvement mortgage; class 11, bonds issued under the debtor's general mortgage dated February 1, 1924, and bonds issued under the improvement mortgage of the Denver & Rio Grande Railroad Company which may be held to be pledged under the aforesaid refunding and improvement mortgage; class 12, secured notes of the debtor, held by the Railroad Credit Corporation, the Chase National Bank of the City of New York, and the Finance Corporation, and debt of the Salt Lake Western, represented by the debtor's demand note which was pledged by the Salt Lake Western as security for a loan from the Finance Corporation; and class 13, all other claims not coming within any of the aforesaid specific classifications.

Claims evidenced by equipment-trust indentures and leases, or equipment-trust certificates secured thereby, were not classified, in view of the following provision of section 77(j):

> The title of any owner, whether as trustee or otherwise, to rolling-stock equipment leased or conditionally sold to the debtor, and any right of such owner to take possession of such property in compliance with the

provisions of any such lease or conditional sales contract shall not be affected by the provisions of this section.

The unsecured claims of general creditors at the time of filing the petitions under section 77 aggregated approximately $440,000. Many of the claims were discharged cur- [fol. 527] rently. The amoung coming within the 6-months' rule was not determined at the time of the hearing.

The amounts of stock, bonds, and secured notes outstanding will be shown in detail later.

The Properties

The Denver's principal eastern terminii are Denver and Pueblo, Colo., at each of which points connection is made with the Atchison, Topeka & Santa Fe Railway and the Colorado & Southern Railway. At Denver, connection is also made with the Chicago, Burlington & Quincy Railroad, the Chicago, Rock Island & Pacific Railway, and the Union Pacific Railroad; at Pueblo, also with the Missouri Pacific Railroad, which is the Denver's main outlet to the East.

On the west, the main line of the Denver passes through Salt Lake City and terminates at Ogden, Utah. Connection is made with the Union Pacific at each point; at Salt Lake City the Denver also connects with the Western Pacific Railroad and at Ogden with the Southern Pacific. The interchange with the Western Pacific is more important than that with any other Western connection.

The road owned by the Denver consists of 1,256.6 miles of main line and 1,094.9 miles of branch lines. Operated under lease are the Rio Grande Junction Railway (hereinafter called the Junction) extending from Rifle to Grand Junction, Colo., 62.1 miles, the Goshen Valley Railroad, a branch line 8.8 miles in length, and the Salt Lake Western, extending from Dotsero, on the Denver, to Orestod on the Denver & Salt Lake Railway (hereafter called the Salt Lake), 38.1 miles. Including these leased lines, the Denver operates approximately 1,357 miles of main lines and 1,104 miles of branch lines. Approximately 771 miles of narrow-gage lines are included in the operated mileage.

[fol. 528] In addition to the above-mentioned mileages, the Denver operates over the Salt Lake, between Denver and Orestod, 128.6 miles. This line, together with the Salt Lake Western, constitutes the Dotsero cut-off route. The

Salt Lake's ownership embraces the line extending from Utah Junction, near Denver, to the western terminus at Craig, Colo., 220.2 miles. For its Denver terminal, the Salt Lake uses, under a lease, the facilities of the Northwestern Terminal Railroad Company. The Salt Lake derives no revenues from the through traffic moving over the cut-off, since all such traffic is handled by the Denver.

The present Denver company was organized on November 17, 1920, succeeding The Denver and Rio Grande Railroad Company, organized in 1908. The former corporation acquired the property of the Rio Grande Western Railway Company (hereinafter called the R. G. Western), owning the line extending west from Crevasse, Colo., to Ogden, Utah, and that of the Denver & Rio Grande Railroad Company of 1886, owning all lines east of Crevasse except the Junction line. The 1908 company assumed obligation in respect of bonds issued under the R. G. Western's first trust mortgage of 1889 and its first consolidated mortgage of 1899. It likewise assumed obligation in respect of bonds issued under the first-consolidated mortgage made by the Denver & Rio Grande of 1886.

The Denver of 1908 also assumed the obligations of the predecessor companies with respect to securities issued by the Western Pacific Railway Company. It also issued bonds under new mortgages, viz, the first and refunding mortgage and the adjustment mortgage. Default in the payment of interest on the first-mortgage bonds of the Western Pacific led to a deficiency judgment against the Denver of 1908 and ultimately to the creation of the present Denver Company, which assumed obligation for all the [fol. 529] bonded debt of the former company. It issued 300,000 shares of capital stock to the Western Pacific Railroad Corporation, a new company formed for the purpose of controlling the Western Pacific Railroad Company. See *Stock of Denver & Rio Grande Western R. R.*, 70 I. C. C. 102. Later, a half interest in this stock was sold to the Missouri Pacific Railroad Company for $9,000,000. *Acquisition of D. & R. G. W. Common Stock*, 90 I. C. C. 161.

Operation of the Junction property under lease began in 1890 and continues under the same lease. It originally provided for the guaranty of the Junction's first-mortgage bonds of 1889 by the Denver of 1886 and the Colorado Midland Railway Company. The latter ceased operation in 1918. These bonds constitute an obligation of the present

debtor, which owns $906,000 of the Junction's refunding bonds, issued in 1929, and $2,000,000, par value, of the Junction's capital stock. The Insurance Group committee contends that the Junction lease is subject to the direct lien of the first consolidated mortgage of the Denver of 1886, and that the earnings of the Junction should be allocated accordingly. The debtor owns the entire capital stock of the Goshen Valley, having a par value of $50,000.

Foreclosure proceedings were instituted against the Denver in 1922 as a result of default in the payment of interest on the first and refunding mortgage and the adjustment mortgage bonds, issued in 1908, which were undisturbed in the previous reorganization. A receiver was appointed and the property was sold at auction to the reorganization managers in accordance with the plan of June 15, 1923. By deed dated December 1, 1924, the property was conveyed back to the company. See *Denver & Rio Grande Western Reorganization*, 82 I. C. C. 745 and 90 I. C. C. 141. The aforesaid first and refunding mortgage bonds, purporting to [fol. 530] represent a lien on a substantial amount of equipment, were exchanged 60 percent in new general-mortgage bonds and 40 percent in preferred stock.

The Salt Lake was incorporated on November 3, 1925, and on January 1, 1927, acquired the properties of the Denver & Salt Lake Railroad Company at foreclosure. *Denver & Salt Lake Reorganization*, 117 I. C. C. 397.

The latter company had by similar means acquired the properties of the Denver, Northwestern & Pacific Railroad Company in 1913, and had extended the line from Steamboat Springs to Craig, approximately 41 miles. Due to difficult operating conditions, the carrier went into receivership in 1917. Between that time and the reorganization of 1925-26, the Moffat Tunnel project was conceived and was carried out by The Moffat Tunnel Commission, which manages the property of the Moffat Tunnel Improvement District. The tunnel is 8.9 miles in length and the portion built for railroad use is leased to the Salt Lake. Under the terms of this lease the Salt Lake is obligated to pay 66 2/3 percent of the principal amounts of bonds issued by the tunnel commission as and when they mature.

With the purpose of developing a western outlet, the Salt Lake organized the Salt Lake Western, which completed the construction of its line from Bond (near Orestod) to Dotsero on June 15, 1934, pursuant to the certificate

issued by the Commission in *Construction by Denver & S. L. W. Ry. Co.*, 154 I. C. C. 51 and 175 I. C. C. 535. All the capital stock of the Salt Lake Western was owned by the Salt Lake. Along with the granting of authority for the construction of the Salt Lake Western line, the Commission authorized the Denver to acquire control of the Salt Lake by purchase of capital stock; *Denver & S. L. Ry. Co. Control*, 170 I. C. C. 4, and 175 I. C. C. 542. Later, in *Denver & R. G. W. R. Co. Operation*, 189 I. C. C. 129, it authorized the Denver to operate the line of the Salt Lake Western under lease and to operate, under trackage rights, over the line of the Salt Lake between Utah Junction and Orestod. The agreements made by the carriers in respect of these matters are described in 175 I. C. C. 535, *supra*. The agreement relating to the Salt Lake Western provides that, contingent upon the transfer of that company's stock or mortgage bonds to the Denver, the latter would finance the construction of the cut-off. The terms of the lease were also set forth. In accordance with this agreement, $3,631,000, par value, of the stock of the Salt Lake Western was transferred to the Denver. The Salt Lake Western has issued no bonds.

The total amount of stock of the Salt Lake acquired by the Denver is 49,540 shares, of no-par-value. Stock remaining outstanding in the hands of the public aggregates 460 shares. All the stocks of the Salt Lake and the Salt Lake Western owned by the Denver, together with various other securities, are pledged with the Finance Corporation as collateral security for loans for the financing of the construction project, the acquisition of the Salt Lake stock, and the payment of interest, taxes, and maturing equipment-trust certificates.

The investment in road and equipment of the several corporations, as shown on the consolidated balance sheet of December 31, 1936, was as follows: $211,635,295 for the Denver, $5,328,626 for the Junction, $3,659,578 for the Salt Lake Western, $503,890 for the Goshen Valley, and $17,059,350 for the Salt Lake, a total of $238,186,739. Including all investments, the grand total was $240,145,360. As of December 31, 1935, the grand total was $238,750,511. [fol. 532] In connection with the above-stated amounts appearing on the consolidated balance sheet, the debtor introduced an analysis of capitalizable assets, based on data furnished to the Commission in other proceedings in connection with applications for authority to issue secu-

rities. The result arrived at is $241,295,293, which is described as the grand total capitalizable investment as of December 31, 1935.

The report of the Bureau of Valuation dated March 1, 1937, filed in this proceeding by direction of division 4, sets forth various elements of rate making value in respect of the Denver property and that of its subsidiaries, as of December 31, 1935. For the Denver, the original cost is $142,800,512, the cost of reproduction new $168,729,747, the cost of reproduction new, less depreciation, $115,467,756, the value of lands and rights $5,428,159, and the amount of working capital $2,473,400. For the Salt Lake the corresponding amounts are $17,549,593, $19,934,420, $14,462,618, $91,854, and $287,000. For the Junction (omitting working capital) the amounts are $3,401,673, $4,100,037, $3,409,074, and $60,330, for the Goshen Valley $499,441, $308,078, $270,756, and $1,908, and for the Salt Lake Western $3,547,081, $3,920,258, $3,880,723, and $7,219, respectively. The totals for the system are: Original cost, $167,798,300; reproduction cost new, $196,992,540, reproduction cost new, less depreciation, $137,490,927; land and rights, $5,589,470; and working capital, $2,760,400.

The sum of the last three amounts is $145,840,797, and if net additions and betterments during 1936 be added thereto, the total would be $147,717,268. On the basis of original cost, the total, as of December 31, 1936, would be $178,024,641.

Securities of the Denver which are owned by the Western Pacific Railroad Corporation include 150,000 shares (50 per cent) of no-par common stock, $2,070,000, par value, of [fol. 533] preferred stock, $1,690,000 of refunding and improvement mortgage bonds, $3,751,875 of general mortgage bonds, $364,000 of R. G. Western first consolidated mortgage bonds, and $10,000 of the first consolidated mortgage bonds of the Denver of 1886. Most of these securities are pledged, the Denver's common stock being deposited with the Finance Corporation as security for a loan to the Western Pacific Railroad Company.

Securities of the Denver which are owned by the Missouri Pacific include 150,000 (50 percent) shares of the no-par common stock, $608,800, par value, of the preferred stock, and $1,000,000 of refunding and improvement mortgage bonds. All the common and preferred stock is pledged with the Railroad Credit Corporation.

Proceedings for the reorganization of the Western Pacific and the Missouri Pacific under section 77 are pending before the Commission and the courts.

Present Capital Structure.

The Denver's balance sheet of December 31, 1936, shows common stock (300,000 shares) as $62,457,540, preferred stock $16,445,600, funded debt unmatured $76,707,500, trustees' certificates $650,000, and grants in aid of construction $800,313. Total current assets were $8,025,321 and total current liabilities were $69,729,998, the latter including $12,966,372 of interest matured unpaid and $45,317,500 of funded debt matured unpaid. Corporate surplus was shown as a deficit of $2,309,419 in liabilities.

The debtor's common stock is held under a trust agreement dated February 1, 1924, voting trust certificates being held in equal amounts by the proprietary companies. The preferred stock is entitled to dividends at the rate of 6 per cent per annum, cumulative from February 1, 1924, and to $100 a share in a dissolution of the company, in preference to the common stock. No dividends have ever been paid on [fol. 534] this stock. Equipment-trust certificates were outstanding as follows: Series A, $600,000; series B, $575,000; and series C, $630,000. Pursuant to the authority granted by division 4 in *Denver & R. G. W. R. Co. Trustees' Equipment-trust certifs.*, 221 I. C. C. 291, $2,175,000 of series D certificates were issued by the trustees in 1937.

The Denver's long-term funded debt outstanding as of December 31, 1936, is briefly described as follows: Junction first-mortgage 5's, due December 1, 1939, principal amount $2,000,000, unpaid interest $158,333; R. G. Western first-trust 4's, due July 1, 1939, principal amount, $15,190,000, unpaid interest $1,215,200; D. & R. G. first-consolidated mortgage bonds, due January 1, 1936, consisting of $34,125,000, principal amount, of 4's, with unpaid interest of $3,412,500, and $6,382,000 of 4½'s, with unpaid interest of $717,975; R. G. Western first-consolidated 4's, due April 1, 1949, principal amount $15,080,000, unpaid interest $1,357,200; the Denver's refunding and improvement mortgage bonds, consisting of series A, due October 1, 1974, principal amount $2,000,000, unpaid interest $270,000, and series B, due April 1, 1978, principal amount $12,000,000, unpaid interest $1,350,000; and the Denver's general mort-

gage 5's, due August 1, 1955, principal amount $29,808,000, unpaid interest $12,544,200, of which $7,452,900 represents noncumulative interest to February 1, 1929.

In addition to the foregoing there have been issued and pledged $906,000 of the Junction's refunding 5's, $10,000 of R. G. Western first-trust 4's, $1,395,000 of R. G. Western consolidated 4's, $1,445,000 of D. & R. G. first consolidated 4's, and $10,481,000 of the Denver's refunding and improvement mortgage 5's. A statement of all securities pledged for short-term loans appears later.

[fol. 535] The debtor introduced statements setting forth its views as to what properties are subject to the respective first liens of the several mortgages. The Junction's first mortgage and refunding mortgages represent first and second liens, respectively, on the 62.1 miles of line owned by this company. No equipment is involved with these mortgages. The R. G. Western first-trust mortgage represents a first lien on 314 miles of main line and a total of 415 miles of line, together with equipment having a ledger value, less depreciation, of $17,637, as of December 31, 1936. The R. G. Western first-consolidated mortgage represents a second lien on that property and a first lien on approximately 283 miles of branch lines in Utah, the entire capital stock of the Utah Fuel Company, and equipment having a ledger value, less depreciation, of $681,191. The D. & R. G. first-consolidated mortgage represents a first lien on 875 miles of standard gauge lines and 683 miles of narrow gauge lines in Colorado and on equipment having a ledger value, less depreciation, of $4,708,523, as considered by the debtor. The Denver's refunding and improvement mortgage represents a first lien on 85 miles of standard gage and 34 miles of narrow gage branch lines in Colorado and Utah, a junior lien on all other lines owned, a collateral lien on the Junction property subject to the lien of the first mortgage, a reversionary right to the stock of the Utah Fuel Company, and a first lien on equipment having a ledger value, less depreciation, of $7,268,622, according to the debtor. In addition, there are pledged under this mortgage the shares of stock, less directors' qualifying shares, of the Denver Union Terminal Company, the Pueblo Union Depot & Railroad Company, and the Salt Lake City Union Depot & Railroad Company owned by the debtor, together with $906,000 of the Junction's refunding bonds. The Insurance Group committee contends that a portion of the above-mentioned equip-

[fol. 536] ment, having a depreciated value of $1,333,252, should be allocated to the first lien of the D. & R. G. first consolidated mortgage rather than to that of the refunding and improvement mortgage. The Denver's general mortgage represents a lien generally upon the property securing the refunding and improvement mortgage but junior thereto. The Denver's investment in the stocks and bonds of the R. G. Western, the Salt Lake, the Salt Lake Western, and the Goshen Valley, together with advances, aggregates $15,060,147. Its short-term secured debt, as of December 31, 1936, consisted of loans from the Finance Corporation totaling $10,691,850, upon which the interest unpaid amounted to $626,108, a balance of approximately $300,000 due on a loan of $500,000 from the Railroad Credit Corporation, and a demand note for $1,500,000 given to the Chase National Bank of the City of New York upon which $93,948 of interest was due.

The collateral pledged as security for the Denver's note to the Finance Corporation in the amount of $7,581,000 and the Salt Lake Western's note in the amount of $3,110,850 (the latter also secured by a demand note of the Denver for $3,182,150) consists of the following securities: $10,000 of R. G. Western first-trust 4's, $1,395,000 of R. G. Western, first-consolidated 4's, $783,000 of D. & R. G. first consolidated 4's, $4,385,000 of the Denver's refunding and improvement 5's, $1,266,000 of the Salt Lake's income 6's, 49,540 shares of the Salt Lake's capital stock, 36,310 shares of the Salt Lake Western's capital stock, 56,700 shares (100 percent) of the capital stock of the Denver-Colorado Springs-Pueblo Motor Way, Incorporated, 1,352 shares (100 percent) of the capital stock of Rio Grande Motor Way, Incorporated, 500 shares (100 percent) of the capital stock of the Goshen Valley Railroad Company, and $1,777,000 of bonds of the Rio Grande Southern Railroad [fol. 537] Company. The above-stated shares of the motor companies' stock include additional shares deposited in May, 1937, in accordance with the supplemental certificate issued by division 4 in *Denver & R. G. W. R. Co., Reconstruction Loan*, 221 I. C. C. 107. The notes to the Finance Corporation are further secured by a junior lien on the collateral pledged with the Railroad Credit Corporation and the Chase National Bank, viz, $662,000 of D. & R. G. first consolidated 4's and $6,096,000 of Denver's refunding and improvement 5's, respectively. The Credit Corpora-

tion is further secured by pledge of the debtor's distributive share of the funds collected under the "marshaling and distributing plan" and by a junior lien on the collateral pledged with the Finance Corporation. The motor companies above referred to represent an investment of $172,300 by the Denver. Operating as feeders to the railroad, they report substantial earnings in practically every year since 1927.

Unsecured general claims against the debtor aggregate approximately $440,000. An undetermined amount falls within the 6-months' rule. To the extent these unsecured creditors are not paid off currently they would be offered, under the debtor's plan, participating preferred stock at the rate of one share for each $100 of claims.

The debtor stated that during the 11-year period following the previous reorganization, more than $30,000,000 was expended for additions and betterments on the property, while the amount of equipment obligations was reduced by $1,925,000 and the amount of refunding and improvement mortgage bonds outstanding was increased by $12,000,000, due, however, chiefly to the retirement of bonds matured on June 1, 1928. For the payment of interest and taxes not earned in 1931, 1932, and 1933, loans of $3,950,000 from the Finance Corporation and of $500,000 from the [fol. 538] Railroad Credit Corporation were obtained. Additional loans from the Finance Corporation, in the amounts of $3,631,000 and $3,110,850, were obtained for the Salt Lake Western construction and the purchase of Salt Lake stock, respectively. The bank loan of $1,500,000 was also applied to the latter purpose. Including $1,042,559 of Salt Lake income bonds, together with advances, the Denver's investment in the cut-off route amounts to $12,526,376.

Division 4, by orders entered on January 29 and December 23, 1937, and March 1, 1938, authorized the trustees of the debtor to issue and sell trustees' certificates of series C, not exceeding $1,800,000 in amount, series D, not exceeding $3,200,000, series E, not exceeding $1,800,000, and series F not exceeding $2,000,000. *Denver & R. G. W. R. Co. Trustees' Certificates*, 217 I. C. C. 796, 224 I. C. C. 336 and 596.

The Denver's obligation in respect of the securities of the three terminal companies, mentioned above in connection with the refunding and improvement mortgage bonds, is shown in the agreements made for joint use of the ter-

minals. Copies of such agreements, together with the balance sheets and income accounts of the terminal companies, are of record herein.

The unpledged securities owned by the debtor and its subsidiaries include $46,000 of certificates issued by the receiver of the Rio Grande Southern Railroad Company and $850,000 of United States Treasury bonds. The debtor states that these were the only securities in the list which had any realizable value. The treasury bonds have passed out of the debtor's possession.

In connection with the Denver's reorganization of 1924 there are still issuable $108,900 of general-mortgage bonds and $15,600 of preferred stock in exchange for old securities. There are issuable by the Salt Lake, in connection [fol. 539] with its reorganization plan of 1925, approximately $20,200 of bonds and 30 shares of stock, and $21,806 in cash is being held for payment to non-assenting bondholders of the predecessor company.

As has been stated, the capitalization of the Salt Lake Western consists of common stock, all of which is owned by the debtor. The securities of the Salt Lake outstanding consist of 50,000 shares of common capital stock of no-par-value, of which 49,540 shares are owned by the debtor, and $12,500,000 of funded debt unmatured. The latter amount is composed of $1,500,000 of first-mortgage 4-percent bonds, due January 1, 1950, and $11,000,000 of 6-percent income mortgage bonds due January 1, 1960, of which $1,266,000 are owned by the debtor.

The $2,217,000 of first-mortgage 5-percent bonds of the Northwestern Terminal Railroad Company are involved to the extent that under the terms of the lease the Salt Lake pays a portion or all of the interest on such bonds, according to the amount of the railway revenues, and in the event the Salt Lake is consolidated with any other railroad the new company shall pay the full 5 percent interest. However, the debtor's plan proposes that the use of these terminal facilities be discontinued and that the debtor's terminal facilities in Denver will be used by the carriers proposed to be consolidated.

Combining and summarizing the capital structures of the debtor and its subsidiaries as of December 31, 1936, and omitting intercompany holdings and securities pledged, the total long-term and short-term debt, including unpaid interest, was $157,056,723, the amount of preferred stock

was $16,445,600 par value, and the common stock outstanding consisted of 300,460 shares, of no-par-value. The total amount of fixed interest charges for this capital- [fol. 540] ization was $5,835,392 per annum, the contingent interest charges $584,040 per annum, and the preferred stock dividend requirements $986,736 per annum, all based on the principal amounts outstanding, without consideration of the $14,293,464 of accumulated unpaid interest on secured obligations and the $12,745,240 of accumulated dividends on the preferred stock.

Subsequent to December 31, 1936, the capital structure was changed by the issue of additional equipment-trust certificates and trustees' certificates, as has been shown, and by the further accumulation of unpaid interest on funded debt and loans.

The debtor presented a pro forma balance sheet for the combined companies as of December 31, 1936, based on their present investments, with intercompany eliminations and adjustments. The capital liabilities shown are those proposed in the debtor's plan. According to this set-up the assets of the new company would consist of total investments of $228,541,993, total current assets of $9,400,095, total deferred assets of $8,495, and total unadjusted debits of $1,443,351. On the liability side, the total capitalization is shown as $119,454,419, including the proposed no-par participating preferred stock at $1 a share. The amount $113,298,420 is set up as reorganization adjustment of capital, bringing the total capital liabilities to $232,752,839. Total current liabilities are $4,277,141, total deferred liabilities $363,210, and total unadjusted credits $2,000,744. Because of the reorganization adjustment made, no corporate surplus appears.

Traffic and Earnings

As shown by traffic density charts for the years 1935 and 1936, the Denver's freight traffic is fairly uniform in total amount between Denver and Walsenburg, between Pueblo [fol. 541] and Dotsero, between Dotsero and Helper, and between Helper and Salt Lake City, the density increasing in this order of districts. East of Helper the movement is predominantly eastbound, and between Helper and Salt Lake City predominantly westbound. Most of the coal tonnage, constituting the largest single item of traffic handled, originates around Helper and moves west. Except

on small portions of line the traffic of the narrow-gage lines is generally less than 50,000 net ton-miles per mile of road a year. Of the total through traffic in 1935, approximately 40 percent moved over the cut-off. Some of this traffic was created by the opening of the new route and therefore does not represent an actual diversion from the old route via Pueblo.

Of the Denver's freight revenues in 1936, 19 percent was derived from products of agriculture, 6 percent from products of animals, 29 percent from products of mines, 6 percent from products of forests, 34 percent from manufactures and miscellaneous, and 6 percent from less-than-carload freight. The commodities constituting the chief items of traffic move, in general, over all the lines. The traffic originating on the principal branches was described in detail. Compared with the revenues of 1929 the largest relative declines have been in the products of mines and in less-than-carload freight. Compared with 1932, the total revenues in all main freight groups have increased, particularly in products of mines and forests, in manufactures and miscellaneous, and in less-than-carload freight.

The Denver's total carload traffic decreased from 330,250 cars in 1929 to 185,111 cars in 1933, then increasing each year to a total of 276,968 cars in 1936. The overhead or bridge traffic handled during the year ended June 30, 1935, aggregated 1,402,477 tons, yielding revenues of $3,754,924. [fol. 542] In the opinion of the debtor, four or five years will be required for the full development of the cut-off route. The traffic handled over it is highly competitive in character.

A record of the Denver's interchange of freight with its principal connections, from 1924 to 1935, shows that the tonnage received from the Western Pacific exceeds that received from any other line, while the tonnage delivered to the Missouri Pacific exceeds that delivered to any other. In the reverse movement these roads are also important connections. A large tonnage of freight is interchanged with the Union Pacific and Southern Pacific. The Denver's interchange with the Salt Lake is small compared to the interchange with the trunk lines.

Traffic reported as being handled by the Denver, following the opening of the cut-off route, includes that handled over the lines of the Salt Lake Western and the Salt Lake

under the operating agreements made with those carriers, but does not include that handled in trains operated by the Salt Lake.

Of the total freight revenues of the Salt Lake in 1936, approximately 61 percent was from the traffic in bituminous coal. Other important items were crude oil, gasoline, and cement. The coal originates at several local stations and is hauled principally to Denver. Mines are numerous in the territory served. The number of carloads handled in 1936 exceeded that of any previous year. The same is practically true of the oil and gasoline. The latter originates at Craig and is shipped to Denver, and to points west via the cut-off. The Salt Lake's total carload traffic decreased from 32,014 cars in 1929 to 15,801 cars in 1933, then increasing each year to a total of 35,213 cars in 1936. The number of carloads delivered to connecting carriers in 1936 was 24,207 and the number received from such carriers was 1,288.

[fol. 543] The opening of the Moffat Tunnel in 1928 was followed by a marked increase in the earnings of the Salt Lake, and a further increase followed the opening of the cut-off route on June 15, 1934, due to the rentals paid to the Salt Lake by the Denver. The latter's net railway revenues, however, were reduced. Considering the operation of all lines involved, the net loss due to the cut-off, for the 12 months ended June 30, 1935, was computed at approximately $218,000 on the way-bill method of allocating revenues adopted by the debtor, allowing a constructive mileage to the cut-off, or at approximately $285,000, on the way-bill basis, allowing the cut-off its actual mileage. The methods used for allocating revenues will be explained in connection with the plans filed.

The Denver's total operating revenues were at a maximum of $34,828,669 in 1929, declined to less than half that amount in 1933, and have increased progressively since that year, reaching $25,599,309 in 1936 and $8,180,745 during the first four months of 1937. Net railway operating income, however, did not change proportionately, having amounted to $8,528,676 in 1929, $3,357,643 in 1933, and $1,569,814 in 1936. This decline may be ascribed to the steady increase in operating expenses, taxes, and joint facility rents. The emergency freight surcharges collected in 1932 and 1933, under the authority of the Commission in Ex parte 103, amounted to $380,862, and during 1935 and 1936, under Ex

parte 115 to $547,167. Wage reductions made under agreements with organized labor amounted to $851,780 in 1932, $876,876 in 1933, $872,996 in 1934, and $118,024 in 1935. Wages were fully restored on April 1, 1935. The estimated amount of the charges to tax accruals in 1936 on account of the Federal Railroad Retirement Act was $403,479 and on account of the Social Security Act, $135,017.

[fol. 544] The Denver reported a nonoperating income of $675,615 in 1935 and $709,590 in 1936. An analysis of the first figure shows the principal subitems to be income from lease of road and equipment $245,241, dividends on the stock of the Salt Lake Western, $145,240, and interest on a bearer note of the Salt Lake Western, $128,372. After intercompany eliminations, the nonoperating income (including $66,320 as that of the Salt Lake in the same year) amounted to $223,081. Miscellaneous deductions from income aggregated $260,828 in 1935 and $258,547 in 1936. Income available for the payment of interest was $8,938,657 in 1929, $3,497,991 in 1933, and $2,020,857 in 1936. The net income in 1929 was $3,554,110, and the income deficits in 1933 and 1936 were $2,139,757 and $3,911,204, respectively.

The operation of the narrow-gauge lines is reflected in the foregoing figures. About 88 percent of the net ton-miles of these lines is within the territory subject to the lien of the D. & R. G. first consolidated mortgage. The system revenues contributed by the traffic handled from and to points on these lines aggregated $1,953,000 in 1934 and $2,017,000 in 1935. The debtor considers that the system revenue derived from the freight traffic originated on the narrow-gauge lines about equals the operating loss on such lines.

During the three years ended June 30, 1935, the income of the Denver available for the payment of interest represented approximately 1.12 percent of the average book investment in road and equipment, less accrued depreciation on equipment.

The total operating revenues of the Salt Lake declined from the high level of $3,981,131 in 1929 to the low of $1,620,006 in 1934, increasing to $2,234,882 in 1935, and to $2,856,949 in 1936. The corresponding net revenues [fol. 545] from railway operations were $1,754,484, $805,155, and $918,281, and the net railway operating income $1,679,287, $913,122, and $1,090,810. The emergency freight surcharges on the Salt Lake amounted to a total of $119,121

during the years 1932, 1933, 1935, and 1936. The wage reductions aggregated $50,863, the charges under the Railroad Retirement Act $50,037, and those under the Social Security Act, $17,542. The Salt Lake reported net income of $610,069 in 1929, $12,493 in 1934, and $2,455 in 1936.

The combined income accounts of the Denver and the Salt Lake for the years 1927 to 1936, inclusive, with adjustments for intercompany charges and credits, and for an error appearing in the account for 1935, show a downward trend in the income available for interest from 1929 to 1932, a fairly constant level between 1932 and 1935, when it averaged about $3,600,000 a year, and $2,417,746 available in 1936.

The reports of the Bureau of Accounts, filed in this proceeding by order of division 4, show the result of corrections in the carriers' income accounts, 1930 to 1934, inclusive, for accounting not in accordance with the Commission's regulations, an adjustment to include income items entered in profit and loss account by permission of the Commission, and a further adjustment to give retroactive effect to the excise tax in connection with the Railroad Retirement Act, effective March 1, 1936, the Social Security Act, effective January 1, 1936, and the Commission's order respecting accounting for equipment depreciation, effective January 1, 1935. The combined effect of these changes is to reduce the average income of the Denver, available for the payment of interest, from $4,243,563 per annum, to $3,521,239 per annum during the period. On the same basis the average available income of the Salt Lake is reduced from $655,771 per annum to $540,395 per annum.

[fol. 546] Although the combined gross revenues of 1936 were substantially in excess of those of 1935, the net revenues were less, largely because of the heavy maintenance program. Maintenance of way expenditures for the system increased from $2,752,695 in 1935 to $4,453,359 in 1936; maintenance of equipment from $5,285,329 in 1935 to $7,215,066 in 1936, notwithstanding the abnormally high maintenance expenditures in 1935 as reflected in the adjustments made by the debtor in the earnings for the year ended June 30, 1935, hereinafter discussed. On the Denver in 1936, operating expenses were charged with $836,614 in connection with capital charges of $1,314,392 for roadway.

On the Salt Lake, the corresponding charges were $248,005 and $668,574.

In 1936, the Denver expended approximately $1,200,000 on maintenance of way work deferred from prior years and in connection with improvements. For maintenance of equipment $800,000 was spent under like requirements. The Denver proposed an improvement program for the years 1937, 1938, and 1939, involving a total capital expenditure of $6,179,700 for road and equipment, with operating charges of $4,070,800, and cash requirements of $9,905,200 in connection with such improvements.

The Salt Lake's line has been largely rebuilt during recent years and the amount of deferred maintenance is evidently slight. A witness for the Finance Corporation considers the line to be virtually a new railroad. However, an improvement program for the years 1937, 1938, and 1939 is contemplated, by a director of the Salt Lake, under which the expenditures would be $2,194,000 for road and equipment and $693,000 for operating expenses. More than half this outlay would be made for reducing curvature and revising the alinement. The debtor's testimony was to the effect [fol. 547] that the expenditures for improvements would have to be continued for two or three years longer in order to bring the Salt Lake up to the standard of the Denver. Incidental to the showing made by the Finance Corporation with respect to the Salt Lake, a study was introduced in which the income available for interest was estimated at $1,449,000 for 1936 on the basis of the Salt Lake's operation as an independent carrier, assuming no further rehabilitation of the line between Orestod and Denver to be necessary.

A study for a determination of the earnings of the Denver and the Salt Lake during a normal year was presented by the president of the Denver, such study indicating that the total operating revenues of both roads would be $33,721,189, the total operating expenses $23,918,282 (operating ratio 71.49 percent), the net railways operating revenue $6,435,857, and the income available for interest $6,215,423. In the opinion of the witnesses such results may be expected in 1939. The debtor's estimate of freight traffic, which was made in collaboration with the officers of two trunk lines that connect with the Denver, was based on a study of the traffic in each principal commodity handled between 1928 and 1936, and the number of carloads, average tonnage, and average revenue per car for a normal year were estimated in the case of each commodity. Consideration

was given to business conditions in the local territory and to the trend of production, to the effect of opening the cut-off, and to present and prospective rate levels. A substantial increase in the traffic connected with the mining industry is reflected in the forecast. Operating expenses were based on the total amount of revenues estimated. A continuation of the present scale of wages was assumed. Maintenance expenses for the Denver were fixed at 33 percent of [fol. 548] gross revenues, which compares with an average of 35 percent for the years 1925 to 1936, inclusive. For the Salt Lake, the ratio was taken at 30.7 percent.

A study of the prospective revenues of the combined lines was also made by a bank officer, testifying as a financial expert, who showed that the operating revenues of the Denver since 1933 represented an increasingly large proportion of the operating revenues of all class I roads. By relating the trend of railroad earnings to the number of workers employed in the durable goods industries, and making certain assumptions as to normal conditions in industry and in railroad rates, the witness arrived at an estimate of $32,559,560 for the total operating revenues of the Denver. Such sum is $1,825,560 in excess of the "normal" revenues shown in the president's forecast.

The debtor selected the 12 months ended June 30, 1935, as the basis for the allocation of earnings to mortgage districts in connection with the development of its plan of reorganization. In this so-called test period, the total operating revenues of the system were $21,828,298, the total operating expenses $16,485,571, the net railway operating income $3,149,365, and the income available for interest $2,923,024.

These figures, however, were materially changed, as will be shown in describing the debtor's plan, by adjustments made in order to eliminate abnormalities in operating conditions during the test period and to establish a level of earnings which would be generally representative, giving effect to the opening of the cut-off route. Thus, the income of the Denver assumed as available for interest was increased to $2,813,063, and by adding the earnings of the Salt Lake's independent operation, together with the estimated savings for unified operation, the system income available, [fol. 549] based on the test period year, was placed at $3,926,223. This was the figure used in computing the amounts of new bonds assignable to the present first-lien

bondholders on the basis of the respective earnings of different divisions of the system, but in the determination of the amount of future fixed charges permissible still another change of base was introduced, viz, the average earnings of 1932, 1933, and 1934. With certain adjustments, this computation indicated $3,687,328 as the income of the system available for the payment of interest.

Debtor's Plan of Reorganization

The debtor's plan, dated July 28, 1936, is based upon a consolidation of the properties of the Denver, the Salt Lake, the Salt Lake Western, the Junction, and the Goshen Valley. The amount, character, and distribution of securities to be issued by the new company were determined primarily from earnings. During the course of the hearing the debtor, at the request of certain interveners, made additional studies of the earnings of the lines subject to first-lien mortgages, arriving at a distribution of the new securities which differed materially from that originally proposed. On brief, the revised distribution is favored, yet the debtor states that it does not desire technically to amend the original plan.

In order to ascertain the earnings of the several mortgage districts as a basis for the apportionment of new bonds, the debtor adopted a formula or general method, which was applied to the revenues and expenses of the Denver during the 12 months ended June 30, 1935. The Salt Lake was not included in the first step of the analysis since its mortgages apply to the entire line and its earnings are separate from those of the Denver. Freight revenues of the Denver were divided among the mortgage districts on an average ton-mile basis, and it was considered proper to assign the [fol. 550] same mileage to the cut-off route between Denver and Dotsero as that of the old route between those points via Pueblo, although the latter route is approximately 175 miles longer.

It appears from the revised figures, as has been stated, that the operation of the cut-off during the first year resulted in a system loss of approximately $218,000, because of increased transportation costs, despite a substantial increase in through traffic. The effect of the diversion of traffic to this route was to deprive the lines subject to the lien of the D. & R. G. first consolidated bonds of approxi-

mately $900,000 of annual revenue, which would otherwise have accrued to such lines.

Maintenance of way expenses were adjusted in a manner intended to show normal conditions over an average period. For the cut-off, much larger expenses than the actual were used. Maintenance of equipment expenses were apportioned to engine districts on the basis of equipment mileage, using the years 1933 and 1934 as typical, and certain assumed ratios were employed in dividing the total expense of locomotive repairs between the freight and passenger services.

For the use of equipment, the charges to each first-lien mortgage were made on the basis of 2 percent per annum applied to the ledger value of the equipment used, less depreciation. The mortgage with a lien on the most equipment represented the district where the smallest use of equipment took place. In support of the 2-percent rate, the debtor cited the interest rates on various recent equipment trust issues. Yard switching expenses were distributed on a car-mile basis over the different divisions of the system. This method was also followed for maintenance expenses of yards and yard locomotives, station services, etc.

[fol. 551] The adjustments made in the actual earnings of the Denver during the test-period year consisted principally of a reduction of approximately $714,000 in total maintenance charges, a reduction of $452,618 in nonoperating income, due to intercompany eliminations, of which reduction $65,889 was not specifically explained, and the elimination of $261,570 of miscellaneous deductions from income, of which $10,807 was not explained. To the income of the Denver there were added $182,342 to compensate for the abnormally low earnings from the potato traffic originating in the San Luis Valley, and $83,333 to represent the earning power of the Utah Fuel Company. As a result of all adjustments, the income of the Denver available for interest was finally shown as $2,813,063, and the corresponding amount for the consolidated system as $3,926,223.

Objections to the use of the year ended June 30, 1935, as an earnings base were expressed by the trustee of the R. G. Western consolidated mortgage, the trustee of the Denver's refunding and improvement mortgage, the Untermyer family group, and the Security Research Bureau. In

general, these interveners urge the use of a base reflecting conditions after the cut-off route shall have become definitely established.

The entire formula is admittedly open to objection and is largely a matter of judgment. Controversy arose especially in regard to the debtor's treatment of the cut-off, the priority of mortgage liens with respect to equipment, the rental charged for equipment, the segregation of company freight, the allocation of branch-line losses, the adjustment for the higher rate scale on the narrow-gage lines, and the period chosen as representative of earning power.

The debtor revised its first formula in various respects, principally by allocating freight revenues according to [fol. 552] actual way-bills to the extent records thereof were available, by segregating company freight and including only so much of the cost of handling as was involved where one mortgage district bore the expense of work done by another, by separating train switching from general road operation, and by charging the narrow-gage districts with the cost of transferring freight from narrow-gage to standard-gage cars, and vice versa. The test-period basis of earnings, as adjusted, was retained, but the revisions just mentioned resulted in substantial changes in the allocations.

A further revision of the formula showed the effect of computing the earnings of the cut-off operation on a straight mileage basis. This analysis was utilized in part by the committee in preparing its plan, as will be explained later.

From the primary distribution of earnings, the ratio of the earnings of each mortgage district to the total was established. These ratios were next applied to the total fixed interest charges considered permissible for the new company. In the detailed computations such charges were taken at $2,598,474, based on a 1.3 coverage for the earnings of the calendar year 1935, and in the final set-up for the new capital structure they are shown as $2,584,165. The debtor offers further support for the total fixed charges proposed by referring to the average income available for interest during the 3-year period 1932-34, which with certain adjustments, was $3,687,328, or 1.42 times the amount of the charges adopted.

After the distribution of each mortgage district of its proportionate share of the permissible new interest charges, such shares were compared with the earning power of each district, as established on the basis of the test-period per-

formance. In the case of certain districts, such as those [fol. 553] represented by the Junction first mortgage and the R. G. Western first-trust mortgage the earnings exceeded the proposed fixed interest charges; in other divisions deficiencies were shown. The surpluses were passed on to the next junior obligations, and were considered in fixing the amount of new bonds to be offered to the present bondholders, the Finance Corporation, and the Credit Corporation. The Finance Corporation, by virtue of its lien on the stocks of the Salt Lake and Salt Lake Western, was credited with the earnings of the cut-off route and those of the Salt Lake's separate operation. It was also credited with the dividends paid on the stocks of the motor carriers. From calculations based on the revised formula, the debtor arrived at new proportions for the distribution of first and refunding mortgage bonds, general-mortgage bonds, and first preferred stock to the holders of the present securities. The record of market prices of the debtor's securities was given some weight in determining the allocation of new securities.

The debtor proposes to leave the equipment obligations undisturbed, to call in the Salt Lake's bonds for redemption, to issue bonds under three new mortgages, and to issue three classes of new capital stock, all to be exchanged for existing bonds, stocks, and the notes to the Finance Corporation and Credit Corporation in varying ratios. A new collateral note would be issued to the Chase National Bank. No provision is made in the plan for the trustee's certificates which may be outstanding when the plan becomes effective. The Western Pacific and the Missouri Pacific would retain stock control of the new company but each would relinquish the $1,000,000 of refunding and improvement mortgage bonds which it owns, and in addition each would agree to purchase $1,500,000 of new bonds at par. In connection [fol. 554] with the equity in the present common stock the debtor showed that between 1925 and 1935 approximately $4,383,000 was expended for improvements from net income which might have been applied to dividends on the common stock. The cost of the improvements made on each mortgage district and on the Salt Lake was supplied for the record.

Under this plan new income bonds are to be offered for the 460 shares of Salt Lake stock outstanding in the hands of the public. The Finance Corporation was expected to

underwrite $11,443,680 of new first and refunding mortgage bonds, and to accept $11,317,950 of such bonds as payment of the debt to it.

Accruals of unpaid interest on the present bonds and short-term debt, of the Denver, excluding pledged bonds, amounted to $14,293,464 as of December 31, 1936. The debtor makes no provision for interest not earned during the trusteeship, amounting to approximately $4,770,000. Other accrued interest is to be funded in new securities junior in rank to those issued against the principal obligation.

The new capitalization proposed by the debtor, based on the obligations actually outstanding on December 31, 1936, would be as follows: Equipment-trust obligations, $1,895,000; Western division 3½-percent bonds, representing a first lien on the standard-gage lines west of Dotsero, $22,680,233; first and refunding mortgage 4-percent bonds, representing a first-lien on all standard-gage lines east of Dotsero and a second lien on all other standard-gage property, $48,222,730; general income mortgage 4-percent bonds, cumulative for two years, representing a lien junior to that of the first and refunding bonds, $18,686,850; first preferred 4½-percent non-cumulative stock, of $100 par value, $30,376,050; participating preferred 5-percent stock, of no-par. [fol. 555] value, 413,842 shares; common stock, of $1 par value, 200,000 shares; and a collateral note for $1,542,200 issued to the Chase National Bank. The bonds and stock proposed to be pledged as security for this note are not included in the foregoing totals. There is included in the amount of first and refunding bonds stated, $3,000,000 of bonds which are to be sold immediately to provide for capital expenditures, and $3,000,000 of bonds which are to be available for sale to the Missouri Pacific and Western Pacific. The debtor considers that the minimum amount needed for cash working capital is approximately $1,000,000. Approximately $277,000 in cash would be paid to the holders of certain divisional bonds as an adjustment of interest rates.

The capital stock of the Utah Fuel Company would be pledged under the proposed general mortgage. As has been indicated, this stock is now under the first lien of the R. G. Western consolidated mortgage, subject to a right of redemption upon the payment of $6,000,000 in cash or upon the deposit with the mortgage trustee of $6,000,000, principal amount, of the consolidated mortgage bonds. The

company's balance sheet of December 31, 1936, shows the asset value of the fuel company property as $15,171,943, the par value of stock outstanding as $10,000,000, and the corporate surplus as $2,652,839. An appraisal of the property, made for the trustee of the R. G. Western consolidated mortgage by a mining expert, indicated a going-concern value of $4,653,720. As has been stated, the debtor, in applying its formula for allocation of earnings by mortgage districts, credited this mortgage with an income of $83,333 per annum from the fuel company, based on dividends paid, but not earned, in the period 1932-34. In 1935 and 1936, small amounts of net income were reported. The [fol. 556] property and its operations are completely described in the record. As part of the security for the R. G. Western consolidated mortgage bonds, its value is an element in the claims of the trustee under that mortgage.

Including $1,865,000 of equipment obligations and $650,000 of trustees certificates, the total funded debt of the new company under the debtor's plan would be $92,937,013, the fixed interest charges $2,868,235 per annum, and the contingent interest charges $747,474 per annum. Dividend requirements on the first preferred stock would be $1,366,922 and on the participating preferred $2,069,210 per annum. The total capitalization of the new company, if a par value of $1 a share be assigned to the participating preferred stock, would be $123,926,905.

The theoretical application of income available for interest annually would be in the following sequence, under the debtor's program: 1, Fixed interest, $2,868,235, 2, fund for additions and betterments, $350,000; 3, fund for retiring first and refunding bonds (one-half of 1 percent per annum on the maximum principal amount at any previous time outstanding) $241,113; 4, contingent interest or income bonds, $747,474; 5, second payment to the fund for additions and betterments, $250,000; 6, fund for retiring income mortgage bonds (one-fourth of 1 percent on the maximum principal amount at any previous time outstanding $46,717; 7, dividends on the first preferred stock, $1,366,922; 8, dividends on the participating preferred stock, $2,069,210; grand total before dividends on the common stock, $7,939,671.

The foregoing figures omit provision for the payment of any undistributed profits tax under the Revenue Act of 1936. The debtor submitted an estimate of the amount of such tax in the future, based on various amounts of net

[fol. 557] income available for interest, indicating $180,000 per annum as a probable maximum.

Expenditures for additions and betterments during three years after reorganization would be initially capitalized in full through the issue of not exceeding $6,000,000 of first and refunding mortgage bonds to be issued as treasury bonds. Thereafter, bonds may be issued under either the Western division mortgage or the first and refunding mortgage up to 75 percent of the cost of additions and betterments, the remaining 25 percent to be supplied through the proposed capital fund. The debtor's intention is that the first and refunding mortgage bonds shall constitute the principal medium, but not the only medium, of future financing.

The plan is the result of a comprehensive study by the secretary-treasurer of the Missouri Pacific, and was made at the request of representatives of that company and the Western Pacific, acting as a managing committee of the Denver. Conferences on the development of the plan were had with representatives of the Finance Corporation, the Chase National Bank, the insurance group, and others. Resolutions approving the plan were enacted by the boards of directors of the several companies involved, except the Salt Lake and the Goshen Valley, but no action has been taken with respect to the application for authority to consolidate the properties in accordance with section 5 (4) of the Interstate Commerce Act, as amended. The debtor contends that under the provisions of section 77 (b) applications for authority to consolidate are unnecessary.

Disapproval of the debtor's plan was expressed by the Insurance Group, the Security Research Bureau, several mortgage trustees, the Railroad Credit Corporation, the Finance Corporation, and others. The Finance Corpora-[fol. 558] tion declined to give its consent, as pledgee of the stocks of the Salt Lake and the Goshen Valley, to the concurrence of these companies in the plan. It contends that during the period of the Denver's trusteeship no rental has been paid for the use of the Salt Lake Western line, nor have the trustees acted either to affirm or disaffirm the lease.

The chairman of the Finance Corporation is in favor of a consolidation of the Western Pacific and the Denver. A special committee of the latter's directors has been appointed to negotiate such a consolidation, and in the event it is to be undertaken the debtor will file a supplemental plan. The debtor considers that the proposed Western

division mortgage might be extended to cover the Western Pacific property, and certain of the bonds reserved under that mortgage could be issued to the holders of Western Pacific securities.

The Finance Corporation introduced evidence pertaining to the cut-off route, as compared with the route via Pueblo, for the purpose of showing the superiority of the former in respect of grades, curves, and other physical features, cost of moving freight and passengers, originated traffic, and many other matters. It contends that its loans to the Denver are fully secured, that it has extensive powers of control over the Salt Lake and the Salt Lake Western, and that it is entitled to such treatment in the reorganization as will fully satisfy its claims. Objection is made to the proposed offer of new bonds which would represent only a second lien on the Western lines, and it is urged that all unpaid interest should be paid in full.

Insurance Group Plan

The Insurance Group committee represents seven mutual life insurance companies which, taken together, owned [fol. 539] $15,871,000 of bonds issued under the Denver's underlying mortgages, principally the R. G. Western and D. & R. G. first consolidated, but no bonds issued under the debtor's own mortgages. The holdings represent more than 10 percent of the principal amount of bonds in each class outstanding. These insurance companies owned more than $91,000,000 of bonds and equipment obligations of the Missouri Pacific and its subsidiary companies, and nearly $15,000,000 of similar securities of the Western Pacific.

The formula used by the committee for the distribution of revenues and expenses is a modification of the debtor's formula, based on the same test period. Consolidation of the properties is likewise contemplated, and, while consolidation with the Western Pacific is not directly provided for, the committee states that its plan leaves the way open for such consolidation.

The committee used the debtor's distribution of earnings by mortgage districts, as revised on the basis of actual way bills, adjusting the results thereof (1) by allowing 42 percent of the constructive mileage adjustment for the cut-off, (2) by reallocating a certain group of equipment, and (3) by recognizing all fixed interest charges unpaid up to

December 31, 1936. The net result of the changes was to increase the amounts of test-period earnings (totaling $3,926,223) assigned to the Junction first-mortgage, the R. G. Western first-trust mortgage, and the D. & R. G. first consolidated mortgage, and to reduce the amounts assigned to other items, notably the lines subject to the lien of the Finance Corporation notes.

The arbitrary allowed to the cut-off in the committee's plan arises from an adjustment of the debtor's ascertain-
[fol. 560] ment of unit operating expenses for the two routes, respectively, such adjustment being confined to maintenance costs, which, it was thought, the debtor had not treated on a comparable basis. Rejecting the debtor's various reasons for the 175-mile arbitrary allowed to the cut-off, the committee asserts that if the cut-off were operated as a separate railroad no division of the through rate could reasonably be expected to exceed the 42-percent allowance.

The committee's adjustment with respect to the allocation of equipment results in a credit of $26,665 to the earnings of the D. & R. G. first consolidated mortgage district and a debit of like amount to the earnings of the refunding and improvement mortgage district. This amount represents the application of the 2-percent rental to equipment having a ledger value, less depreciation, of $1,333,253, and considered by the committee to be subject to the paramount lien of the D. & R. G. first consolidated mortgage rather than to that of the refunding and improvement mortgage. As to all other equipment the debtor's allocation of equipment under the several mortgages was adopted by the committee.

This plan assigns the earnings of the Junction, in excess of the requirements of its present bonds, to the D. & R. G. first consolidated mortgage district, while the debtor assigns them to the refunding and improvement mortgage district. The point at issue is whether or not a lease agreement, made in 1889, is subject to the first consolidated mortgage by virtue of the after-acquired clause of that mortgage.

In applying its formula, the committee arranged the present mortgages in four groups, viz. the R. G. Western district, the D. & R. G. district, the R. & I. district, and the R. F. C. district, and based its computations on the total earnings allocated to each. In the case of the R. G. Western
[fol. 561] district, $16,415,667 of new first-mortgage fixed-interest bonds are to be issued for a like amount of claims

of the present first trust bonds, both actually outstanding and pledged, with all unpaid interest to December 31, 1936. This treatment recognizes the fact that the test-period earnings were in excess of the interest requirements of the first trust bonds. For the total claims of the R. G. Western consolidated mortgage bonds, the committee proposes to issue $8,938,577 of new first-mortgage bonds and $9,506,025 of new income bonds, the latter figure including $567,448 as an allowance for control of the Utah Fuel Company. The total amount of these new bonds is equal to the total amount of present consolidated mortgage bonds, with interest. This result is arrived at despite the fact that the earnings in the test-period year, allocated to the consolidated mortgage bonds, are shown as a deficit of $96,811. It further appears that, although the committee's calculations to determine the allowable amount of fixed interest and contingent interest bonds purport to reflect average earnings during the period 1932-35, the test period base has been adhered to in fact. In the brief filed by the Security Research Bureau many alleged errors in the calculations are pointed out.

The plan proposes a new first mortgage, secured by a lien on all the consolidated railroad properties, except the narrow-gage lines and their equipment, together with the stock of the Utah Fuel Company. Series-A bonds issued under this mortgage would be convertible into series B, would bear interest at 4 percent, and mature in 15 years. The reorganization committee would have the power, subject to the approval of the Commission, to reduce the term to not less than 10 years and to increase the rate of interest to not exceeding 4½ percent, in order that such bonds may be marketable at or near par. The series-B bonds would [fol. 562] bear interest at 4 percent and have a term of 40 years. The first-mortgage bonds, which may be limited in amount by the terms of the mortgage, are to be issuable to the extent of 75 percent of the cost of additions and betterments. Income mortgage bonds, subject only to the lien of the new first mortgage, would be issued under a mortgage closed at the amount of bonds to be issued in the reorganization. The income bonds would have a term of 50 years and an interest rate of 4½ percent, cumulative up to a maximum of 22½ percent. These bonds would be entitled to a sinking fund of one-fourth of 1 percent per annum on the total principal amount of bonds issued in the reorganization.

The plan proposes an issue of convertible preferred stock, entitled to dividends at the rate of 5 percent per annum, cumulative; common stock of two classes; and warrants carrying the right to purchase common stock. A new collateral note would be issued for the present bank debt, and provision is made for the issue of a promissory note to the Railroad Credit Corporation in the event the latter's note is not paid through distributions under the marshaling and distributing plan, or by cash. For the total amount of principal and interest due the Finance Corporation, approximately 58 percent is proposed to be paid in new first-mortgage bonds, series B, and 42 percent in new income bonds.

The chairman of the Finance Corporation advised counsel for the committee that if it is not found feasible to effect a consolidation of the Denver and the Western Pacific, and the plan of the committee is approved by the Commission and affirmed by the court within a reasonable time, the Finance Corporation will finance, at par and accrued interest, $11,443,675 of new first-mortgage 4-percent bonds, as provided in the plan for the purpose of refunding the first-mort- [fol. 563] gage and income bonds of the Salt Lake now outstanding.

The new capitalization proposed by the committee, based on the obligations actually outstanding on December 31, 1936, would be as follows: Equipment-trust obligations $1,805,000; first-mortgage bonds, series A, $18,563,533; series B, $52,057,197; income mortgage bonds, $27,042,895; a collateral note for approximately $1,542,200; preferred stock, $26,403,389, par value; common stock, of no-par-value, class A, 349,002 shares; warrants for class-A common stock, 164,456 shares; and warrants for class-B common stock, 200,000 shares. The above total of first-mortgage bonds includes, for the sake of comparison with the debtor's plan, $6,000,000 of bonds proposed to be issuable to redeem trustee's certificates, to provide for reorganization expenses or working capital, or to be applied to other approved purposes. Securities to be issued and pledged are not included in the above summary. Approximately $58,000 in cash would be paid to the holders of certain divisional bonds as an adjustment of interest rates.

The total amount of funded debt under this plan would be $101,359,982, the fixed interest charges $2,961,915 per

annum (assuming the interest rate on the first-mortgage series-A bonds to be 4 percent), and the contingent interest charges $1,216,930 per annum. Dividend requirements on the preferred stock would be $1,320,169 per annum. The total capitalization of the new company, assigning a par value of $1 a share to the common stock and warrants, would be $128,476,829.

The theoretical application of income available for interest annually under the committee's program would be in the following sequence: (1) Fixed interest, $2,961,915; (2) fund for additions and betterments, $750,000; (3) contin- [fol. 56] gent interest, $1,216,930; (4) sinking fund for the income bonds, $67,607; and (5) dividends on preferred stock, $1,320,169; grand total, before dividends on the common stock, $6,316,621.

Under this plan, the Junction first-mortgage bonds and the R. G. Western first trusts would receive new first-mortgage bonds in amounts equal to the principal of the present bonds, respectively, plus accrued interest. In the case of all other bonds, various proportions of first-mortgage series-B bonds, income bonds, and preferred stock are assigned, except that class-A common stock only, is to be issued for the present general-mortgage bonds, and the present bonds of the Salt Lake are to be called for redemption and paid through the issue and sale of new first-mortgage series-B bonds, as has been noted. Income bonds in the amount of $9,931 are proposed to be issued to the holders of the 460 shares of Salt Lake Stock outstanding in the hands of the public. The new class-A common stock, allocated to the holders of general mortgage bonds, is to be placed in a voting trust pending the disposal of the matter of equity in the present common stock, as hereinafter explained.

The holders of the 164,450 shares of preferred stock would be offered warrants for the purchase of a like number of shares of new class-A common at a suggested price of $20 a share. The holders of the 300,000 shares of common stock would be offered, pro rata, warrants for 200,000 voting trust certificates or shares of new class-B common stock at $30 a share, at any time within six months from the date of effectuation of the plan. In the event this option is not exercised, an assignable option, in the form of warrants, will revert to the reorganization committee for the purchase of 200,000 shares of class-B common at $30

a share, within three years from the effectuation of the [fol. 565] plan. The reorganization committee would be authorized to transfer such option to any interests that it may select as being of the greatest advantage to the new company. The committee suggests the advisability of offering part of the option to the Chicago, Burlington & Quincy Railroad Company and the Chicago, Rock Island & Pacific Railway Company, because of the importance of these connections at Denver, and it is contended that there should be no objection to this association of interests on the part of the Missouri Pacific. Representatives of the latter testified as to the established traffic relations between the Missouri Pacific and the Denver, and the possible unfavorable effect of a future alliance between the Denver and other system, such as the Burlington.

The committee's proposed treatment of the stockholders of the Denver is predicated on a finding that the equity in the present stock is without a value and that the interests of present creditors must receive full consideration before those of the stockholders. In support of its position in this matter, counsel, on brief, cite numerous opinions of the courts, including *In re New York Railways Corporation*, 82 Fed. (2d) 739, and *Northern Pacific R. Co.* v. *Boyd*, 228 U. S. 482. However, the committee, recognizing the interdependence of the Denver, the Missouri Pacific, and the Western Pacific, and the desirability of maintaining the through route which has been developed has provided in its plan the above-described means whereby the proprietors may retain control of the Denver.

Cash proceeds received by the new company from the exercise of the warrants are to be used initially to redeem income mortgage bonds issued to the Finance Corporation. The new class-A common stock would carry full voting [fol. 566] power on all matters affecting the essential aspects of its proprietary interest, while the new class-B common stock, if and when one half of such stock becomes outstanding, would be entitled to elect a majority of the board of directors of the new company, to consist of 12 members. One member would be elected by the holders of the income bonds, two by holders of the preferred stock, and two by the holders of the class-A common stock. The remaining members would be elected by the holders of the class-B common stock.

All the common stock would be issued to the reorganization committee as voting trustees, to be held by them for a period not exceeding three years, but the voting trust may be terminated within 90 days from the date of payment for the warants issuable to the reorganization committee. The reorganization committee would consist of seven members, of whom six would represent a like number of classes of present bonds, and one would be designated by the Finance Corporation.

The plan provides that it shall not be carried out until it shall have been accepted by or on behalf of the holders of at least two-thirds in principal amount of each class of the outstanding bonds of the debtor and by the Finance Corporation, nor unless either (1) the plan shall have been accepted by creditors, other than bondholders and the Finance Corporation, holding at least two-thirds in principal amount of the claims of each class and by the stockholders of each class holding at least two-thirds of the stock of such classes or (2) provision shall have been made for protecting the interests of such non-assenting classes of creditors and stockholders as provided in Article VIII of the plan, provided the reorganization committee may under certain conditions eliminate the requirement for consent as to any class of bondholders or the Finance Corporation upon [fol. 567] substituting therefor the protection for protecting the interests of the bondholders and the Finance Corporation as is provided in Article VIII as to the other classes. Article VIII provides in effect that the properties shall be sold at public auction at not less than a fair upset price as determined by the court in the event that, after the plan shall have been accepted by the holders of at least two-thirds in principal amount of each class of bonds affected by the plan, the holders of more than one-third in principal amount of any other class shall not have accepted the plan within a period to be fixed by the reorganization committee, with the approval of the Commission and the court. In the event of such sale the nonassenting creditors of such class and the nonassenting stockholders of such class shall be entitled to receive their aliquot proportion of the proceeds of such sale, after deducting therefrom all expenses of such sale and the amount which would be required to pay in full all creditors whose claims are prior in lien or superior in equity to the claims of such nonassenting creditors or the rights of such nonassenting stockholders.

The article further provides that upon any such sale the property may be purchased for the benefit of the new company by the reorganization committee, and in that event there should be applied on account of the purchase price therefor the distributive share of the proceeds of sale of all securities the holders of which shall have assented to the plan and the securities, though not assenting to the plan, of all classes of which two-thirds or more in amount have assented to the plan. The provision for the sale of the properties was inserted because of doubt that the confirmation of a plan, without acceptance by two-thirds in amount of each class of creditors and stockholders, would be within the scope of the bankruptcy power or would be permissible [fol. 568] under the due process clause of the Constitution. Counsel assert that the provision of section 77(b)(5), permitting a sale of not less than a fair upset price, was designed for the identical purpose here in view, that the common stockholders will be given an opportunity to choose between the warrants for class-B common stock and the proceeds available to them from a sale, and that the plan offers them fair and equitable treatment.

The committee's plan, as well as the debtor's plan, is unacceptable to the trustee of the refunding and improvement mortgage, who undertakes to show that the rights of the bondholders are not adequately recognized under either plan. The trustee of the D. & R. G. first consolidated mortgage prefers the committee plan but complains of the diversion of traffic and earnings to the cut-off route reflected in the results. The trustee of the Denver's general mortgage objects to both plans, indicating certain modifications which it considers should be made for the proper protection of the rights of the bondholders. The successor trustee under the R. G. Western first consolidated mortgage prefers the committee plan but contends that the holders of bonds issued under this mortgage are entitled to better treatment than is offered under either plan. The Untermyer family group, owners of D. & R. G. first consolidated mortgage bonds, refunding and improvement mortgage bonds, general mortgage bonds, and prefered stock of the Denver, contend that both plans are unfair to the present security holders in many respects and should be disregarded by the Commission in formulating a new plan. The Security Research Bureau recommends several modifications in the committee plan.

[fol. 569] CONCLUSIONS

The obligations and capital stock of the Denver and its affiliated companies, outstanding on June 30, 1938, were substantially as follows:

	Principal amount	Accrued interest	Total
Equipment obligations	$2,795,000		$2,795,000
Trustees certificates	5,000,000		5,000,000
Junction first-mortg. 5% bonds	2,000,000	$308,333	2,308,333
R. G. Western first-trust 4% bonds	15,190,000	2,126,600	17,316,600
R. G. Western consol. 4% bonds	15,080,000	2,262,000	17,342,000
D. & R. G. consol. 4% bonds	34,125,000	5,460,000	39,585,000
D. & R. G. consol. 4½% bonds	6,382,000	1,148,760	7,530,760
D. & R. G. W. ref. & imp. 5% bonds	12,000,000	2,250,000	14,250,000
D. & R. G. W. ref. & imp. 6% bonds	2,000,000	450,000	2,450,000
D. & R. G. W. general mort. 5% bonds	29,808,000	7,327,800	37,135,800
Notes to Finance Corp.	10,691,850	1,267,619	11,959,469
Note to R. R. Credit Corp.	278,000		278,000
Note to Chase National Bank	1,500,000	206,448	1,706,448
Total secured debt of the Denver	136,849,850	22,807,560	159,657,410
D. & S. L. first-mort. 4% bonds	1,500,000		1,500,000
D. & S. L. income-mort. 6% bonds	9,734,000		9,734,000
Total secured debt of the system	148,083,850	22,807,560	170,891,410
D. & R. G. W. preferred stock, $100 par value*			16,445,600
D. & R. G. W. common stock no par value		(shares)	300,000
D. & S. L. common stock, no par value		(shares)	460

* Accumulated dividends $14,225,444.

The approved plan should provide for the above stated amounts of obligations outstanding, which exclude intercompany holdings and securities under pledge. The amounts of equipment obligations, trustees' certificates, and short-term loans shown are subject to any adjustments [fol. 570] which may be necessary in order to restate the exact amounts of these obligations as of June 30, 1938.

The total debt is nearly $14,000,000 in excess of that outstanding on January 1, 1937, the date when the filed plans were to become effective. Under the provisions of section 77(d) the Commission may, after public hearing, approve a plan which may be different from any which has been proposed, and will, in the opinion of the Commission, meet with the requirements of sub-sections (b) and (c), and be compatible with the public interest.

The consolidation of the several companies for unified operation and management, which is an essential part of the plans that have been presented, is in accord with the Commission's findings in *Consolidation of Railroads*, 159

I. C. C. 521, wherein the Denver and the Salt Lake were grouped in System No. 18—Missouri Pacific. The Western Pacific was also included in that system. The present record is inadequate for a determination of the question of merging the Western Pacific with the reorganized Denver. It justifies the conclusion, however, that the consolidation of the Denver, the Salt Lake Western, the Salt Lake, the Junction, and the Goshen Valley would be in the public interest. Notwithstanding the fact that the Salt Lake, the Junction, and the Goshen Valley are not in trusteeship, and that none of the corporations has sought consolidation under section 5(4) of the Interstate Commerce Act, as amended, as a practical matter, in this case, the Commission may include the proposed consolidation in its plan.

Any corporate action by the existing companies which may be necessary under the requirements of section 5(4) of the Interstate Commerce Act, as amended, will be assured if and when the Commission's plan shall be [fol. 571] accepted in the manner provided in section 77(e). As pledgee of the capital stock of the Salt Lake, the Salt Lake Western, and the Goshen Valley, the Finance Corporation is at present in a position of control with respect to the action of those corporations. The Governors of the States in which the several carriers operate were served, prior to the hearing, with copies of the plan of reorganization filed by the debtor, and advised of the provisions for consolidation contained therein.

Capital Structure Recommended

Hereinafter, the term "new company" will be understood to mean either the reorganized debtor or a new company created to take over the properties of the several existing companies. The new company should assume the equipment obligations outstanding, together with all obligations with respect to claims entitled to priority over the mortgage bonds of the debtor and not paid prior to the effective date of the plan. Unsecured claims, other than those which, by order of the court are to be paid in cash, should be settled on the basis of one share of new common stock for each $100 of claim.

The capitalization of the new company, excluding securities to be pledged, should consist substantially of $2,795,000 of equipment obligations taken over, $51,629,377 of new

first-mortgage 4-percent bonds, $27,453,104 of income-mortgage 4½-percent bonds, $32,541,204, par value, of 5-percent preferred stock, and 371,761 shares of common stock, of no-par-value. In addition, the new company may issue secured notes to the Railroad Credit Corporation and to the Chase National Bank, as of June 30, 1938, representing extensions of the present obligations of approximately $278,000 and $1,706,448, respectively, in the manner hereinafter described. On this basis, the total debt of the new [fol. 572] company would approximate $83,861,929, and the total capitalization, taking the no-par common stock at $100 a share, would approximate $153,579,233. Fixed interest charges would be approximately $2,276,699, contingent interest charges $1,235,390, and preferred stock dividend requirements $1,627,060 per annum. Including the maximum payment of $600,000 to the capital fund and $137,625 to the sinking fund, herein recommended, the proposed annual charges, ahead of dividends on the new common stock, would be about $5,876,414.

Under the committee's plan the total fixed charges would be about $3,032,000 and under the debtor's plan $2,924,000, in both cases based on the obligations outstanding January 1, 1937, except that the equipment obligations outstanding on June 30, 1938, have been included.

Adverting to the evidence pertaining to earning power, hereinbefore summarized under "Traffic; earnings," the actual income of the system lines, available for interest, during the depression years, 1932-35, after intercompany eliminations, averaged $3,606,920 a year. Applying a coverage factor of 1.3 to this sum, the committee tentatively arrived at $2,774,554 as the permissible amount of new fixed interest charges. The actual average income for the period 1934-36 was $3,118,197. As determined by the Commission's Bureau of Accounts, but eliminating the retroactive application of the social security and railroad retirement taxes, the carriers' available income from 1930 to 1934, inclusive, averaged $4,569,235 a year. The foregoing figures are unadjusted for the reduced maintenance charges which obtained during several years. The available income computed by the debtor for the so-called test-period year was $3,926,223, reflecting the result of operating the cut-off during its first year. The ultimate effect on earnings from [fol. 573] the opening of the cut-off route is plainly uncer-

tain. In view of all the circumstances, the fixed charges of the new company should be within conservative limits.

Division 4 should find, from a consideration of the prospective earning power of the system and in the light of the foregoing statement, that there will be adequate coverage of the fixed charges of the new company, as herein proposed, by the probable earnings available for the payment thereof.

The pledging of the 100,000 shares of Utah Fuel Company stock with the trustee of the R. G. W. consolidated mortgage was described in the report of division 4 in *Denver & Rio Grande Western Reorganization*, 82 I. C. C. 745 (753) and in the report of the Commission in the same proceeding, 90 I. C. C. 141 (148). In its brief filed in the present proceeding, the trustee of the mortgage discusses the status of this stock in detail, refers to the report of the mining expert whom it had employed to examine the property and estimate its value, and objects to the value assigned to the stock by the debtor on an earnings basis in providing for the R. G. Western consolidated mortgage bonds. It objects also to the capitalizable value assigned to this stock by the committee. The plans, however, do attempt to recognize a value for the stock through their formula calculations for the R. G. Western consolidated mortgage bonds. As to the disposition to be made of the stock, the debtor would place it under the direct lien of the new general income mortgage, subject to existing rights of redemption for such stock, while the committee proposes to place it under that of the new first mortgage. The former course seems preferable in view of the allocation of new income mortgage bonds to the holders of the R. G. Western consolidated bonds, D. & R. G. consolidated mortgage bonds, [fol. 574] and refunding and improvements mortgage bonds, as herein proposed.

Description of New Securities

The new first mortgage should constitute a first lien, subject only to purchase money liens, including equipment trusts, on all property owned by the companies embraced in the plan or now in the hands of the trustees of the debtor, except the debtor's narrow-gage lines and their equipment, and the stock of the Utah Fuel Company, and on all property acquired by the new company after the effective date

of the plan, subject to purchase money liens. The mortgage should provide for the issue of series-A 4-percent bonds, having a term of 50 years, in the principal amount of approximately $51,629,377 in connection with the reorganization, and additional bonds of other series, with terms not less than 50 years and rates of interest not more than 5 percent per annum, in unlimited amount, provided such additional bonds be issuable only against 75 percent of the capital cost of additions and betterments to roadway, and acquisitions of fixed property, after appropriate deduction for property retired, for the purchase of new equipment free from any other lien, for the refunding of debt, or on the basis of deposited cash. The bonds of series A should be redeemable, in whole or in part, at any time upon 30 days notice, at their principal amount and accrued interest; bonds of later series at premium rates to be determined by the reorganization committee and approved by the Commission with due regard to the dates of redemption fixed for such bonds. (The appointment and duties of the reorganization committee will be described later.) The plan should provide that additional first-mortgage bonds may not be issued on the basis of additions and betterments, [fol. 575] new property, or cash deposited, unless the income available for fixed charges during a period of 12 consecutive calendar months within the 15 calendar months preceding the date of authentication and delivery exceeds 1½ times fixed charges.

The new income mortgage should constitute a lien on the consolidated properties, subject only to the lien of the first mortgage and any liens that may be prior to the lien of the first mortgage, should be further secured by pledge of the capital stock of the Utah Fuel Company, and should be closed at the principal amount of bonds issued in the reorganization, approximately $28,328,000, including bonds to be pledged. The bonds issued under this mortgage should have a term of 75 years, should bear interest at the rate of 4½ percent per annum, cumulative up to a total of 22½ percent of their principal amount, whether such total percent represents interest for consecutive or nonconsecutive calendar years, and should be redeemable, in whole or in part, on any interest date at their principal amount plus accumulated unpaid interest. Provision should be made for a sinking fund for the purchase and retirement of the income mortgage bonds, the payments into such

fund to be made from available net income, as hereinafter provided, at the rate of one-half of 1 percent per annum of the aggregate principal amount of bonds issued in the reorganization.. The income mortgage should provide that the new company shall not create any mortgage lien upon any of its properties other than the new first mortgage, the new income mortgage, and purchase money liens, including equipment obligations.

Each of the new mortgages should provide for the modification or alteration thereof, and of any supplements thereto, and of the obligations of the new company or bondholders thereunder, by concurrent action by the new [fol. 576] company and of the holders of not less than two thirds in aggregate principal amount of the bonds outstanding, provided that such change or modification shall not impair the obligation of the new company to pay the principal or interest of any bond at the time and place prescribed or shall not permit the creation of any mortgage or lien ranking prior to or *pari passu* with the lien of the first mortgage or the income mortgage, respectively, unless the creation of such mortgage or lien be consented to by the holders of all the first-mortgage bonds or income-mortgage bonds, as the case may be.

The preferred stock of the new company should be authorized in the total amount of 500,000 shares, of the par value of $100 each, of which amount approximately 349,396 shares would be issued in the reorganization, including shares to be pledged. Such stock should be entitled to dividends at the rate of 5 percent per annum before any dividends on the common stock are paid or declared. Dividends, as declared by the board of directors, should be paid annually and should be cumulative to the extent earned in any preceding income period, but not paid. In determining the extent earned, deductions for fixed charges, capital fund, contingent interest, and sinking-fund payments should be made as hereinafter provided, and the payments into the funds should not be treated as borrowings from the net income which would otherwise be payable in dividends on the preferred stock, i. e., added back in computing accumulated dividends, as the committee suggests with respect to the capital fund. In a liquidation of the new company, the preferred stock should be entitled to receive its par value, plus unpaid cumulative dividends, before any dis-

tribution shall be made to the common stock. The preferred [fol. 577] stock should be redeemable, in whole or in part, at any time at its par value plus unpaid cumulative dividends.

The committee's plan prohibits certain acts by the new company without the consent of the holders of at least two-thirds in par value of the proposed series-A preferred stock and in number of shares, of the proposed class-A common stock. Such acts include the creation of additional mortgages, the assumption of indebtedness maturing more than two years from its date, the acquisition of property if exceeding $5,000,000, and various other matters. These are the matters primarily within the sphere of the new management, and any action in these respects is subject to approval by the Commission before being put into effect. It is unnecessary, therefore, to specify in the plan all the conditions mentioned. The suggestion for a two-thirds vote of the stock, however, requires consideration. In view of the difficulty of obtaining the vote of so large a proportion of the stock, it is recommended that the charter or by-laws of the new company provide for a majority vote of each class of stock outstanding for the ratification of any assumption of obligations, issue of securities, acquisition of property, execution of leases, making of loans, etc., with respect to which the approval of the Commission is required under any Federal statute.

The committee's plan provides that the new series-A preferred stock shall be convertible into class-A common stock on a share-for-share basis, and that, when the amount of the preferred shall have been reduced to $10,000,000, or less, the holders thereof shall relinquish their rights in the matter of election of directors. This proposal was made in order to facilitate the retirement of the preferred stock, and as "an inflation hedge". While the conditions under which it would be to the advantage of the preferred stock- [fol. 578] holder to convert his holdings into common stock are rather remote, the provision for conversion is in the direction of an improved capital structure and should be incorporated in the approved plan. It will be unnecessary to make any special provision regarding voting rights in this connection under the plan herein recommended.

The common stock of the new company should be authorized in the amount of 500,000 shares, of no-par-value,

of which approximately 406,613 shares should be issuable in the reorganization, including shares to be pledged.

The preferred and common stock should have equal voting rights, each share being entitled to one vote for the election of directors and in all matters of proprietary interest.

Available Net Income; Capital Fund; Sinking Fund

The available net income of the new company should be determined for the 6-months' period ending December 31, 1938, as though the company had come into possession and operation of the properties and had issued the new securities on June 30, 1938, and thereafter for each calendar year ending December 31. The available net income for any income period should represent the income remaining after deducting all fixed charges during that period, together with an amount representing any deficit in fixed charges which may have accrued in previous periods. The available net income so determined should be applied to the following purposes, to the extent that it is sufficient therefor, in the following order:

1. To the payment into a capital fund, on or prior to April 1 of each year, beginning April 1, 1939, of an amount up to but not exceeding 3 percent of the total operating revenues of the system during the preceding income period, [fol. 579] subject to a maximum limit of $300,000 for the initial payment and $600,000 for each succeeding annual payment. Any amount by which the sum available for the capital fund in any year shall be less than 3 percent of total revenues, should not become cumulative against the available net income of the next succeeding income period. In the event the reorganized company shall establish an operating account for depreciation of roadway and structures, payments into the capital fund should be made from the depreciation reserve so created to the extent that it is sufficient.

2. Any available net income remaining after the payment into the capital fund should be applied, on April 1 of each year, to the payment of accumulated interest, if any, due on the income mortgage bonds, limited to a maximum accumulation of 23½ percent of the aggregate principal amount of bonds at any time outstanding, such payments being made in the order of the due dates of such interest.

3. Any then remaining available net income should be applied, on April 1 of each year, beginning April 1, 1939, to the payment of the interest on the income mortgage bonds then outstanding, in even multiples of one-fourth of 1 percent, up to the total rate of 4½ percent per annum, applicable to the preceding income period.

4. Any then remaining available net income should be applied, on April 1 of each year, beginning April 1, 1939, to a sinking fund for the retirement of the income mortgage bonds issued in the reorganization, the payments to be in amounts up to but not exceeding one-half of 1 percent of the aggregate principal amount of bonds outstanding, and to be noncumulative.

5. Any then remaining available net income should be applied, as may be declared by the board of directors, to the [fol. 580] payment of dividends in the order of their priority, or to other proper corporate purposes.

The use of 6-months' income periods for the determination of available net income, and the payment of interest and preferred stock dividends semi-annually, as proposed by the committee, involves successive adjustments of bond interest and the use of interim dividends on the preferred stock in order that the aggregate payments to the security holders shall be based on the earnings of complete calendar years. This method, it is true, would result in a return to the security holders twice a year (earnings permitting), but it is desirable that the result of a full year's operation be ascertained before any contingent interest or dividends be paid (subject to the condition that the initial income period will be six months), and that the entire amount of such interest and dividends earned be paid as soon after the close of the 1-year income period as is practicable. The date of payment suggested above is April 1 in each year.

The limiting amount of the capital fund herein provided conforms to the total annual payments proposed by the debtor for its additions and betterments fund. An adequate reason for changing the amount is not clear from the record. No specific objection to a provision for a capital fund was presented. The new first mortgage and income mortgage should make such provision and should also provide for the determination and application of available net income, as indicated above. The capital fund should be placed in the hands of the trustee under the new first mortgage and

should be withdrawable by the new company to reimburse it for, or to provide for, the cash cost of additions and betterments to the mortgaged property, including equipment, [fol. 581] not previously certified or thereafter to be certified, as a basis for the issue of new first-mortgage bonds, or the release of mortgaged property, or the withdrawal of cash held by such trustee, and further provided that no expenditures so used as a basis for withdrawal of money from the capital fund shall be made the basis for the issue of any securities ranking prior to or on a parity with the new preferred stock. Withdrawals from the fund should be allowable also for the cash payments in connection with new equipment trusts to the extent that the charges to depreciation of equipment in any income period are less than the total cost of the new equipment acquired. The capital fund should be used primarily for additions and betterments to roadway and structures, and the acquisition of new equipment in connection with equipment trusts or otherwise is intended to be provided for by the charges to depreciation of equipment. A sinking fund should be provided for the retirement of first-mortgage bonds, if any be issued for the acquisition of new equipment, free of other liens, by the payment, annually to the trustee, of an amount equal to the quotient found by dividing the principal amount of such bonds by twice the number of years embraced in the effective service life of the equipment. Any money not withdrawn from the fund would be accumulated by the trustee until the amount of the accumulation shall equal the interest requirements of the new first-mortgage bonds for a period of one year, after which the reserve fund would be withdrawable by the new company for the payment of interest on its first mortgage bonds outstanding in any year when its earnings are insufficient for such payment, and only to the extent of such insufficiency.

[fol. 582] *Means of Future Financing*

In the debtor's plan, the means of future financing by the new company, with respect to requirements not covered by the additions and betterments fund and equipment-trust obligations, are provided through bonds to be issued under any of the proposed mortgages, as well as through the new preferred stock. Counsel for the committee take the position that first-mortgage bonds offer the lowest yield and

provide the cheapest form of financing; that the preservation of a sound capital structure will be insured if the new mortgage imposes proper limitations as to the purposes and amounts of additional issues; that fixed interest bonds issued under such conditions and the limitations prescribed in section 77 provide a continuing medium for investment in railroad securities by trust funds and trust institutions, and thus broaden the market for cheap credit. Counsel further contend that there is no necessity for a sinking fund for the retirement of bonds issued under an open first mortgage, such as is contemplated, and that any reduction in the amount of bonds issuable in order to provide for a sinking fund would be unjustifiable, "since it would require the bondholders to pay off their own debts for the benefit of the equity". In the case of income mortgage bonds, which are issued to present bondholders having a vested contract right to the payment of both principal and interest, creditors receiving such bonds are entitled, in the opinion of counsel, to the payment of the principal as soon as it may be done without prejudice to the property. Accordingly, a sinking fund for the retirement of income bonds, issued under a closed mortgage, is considered desirable, provided the payments thereto are made after payments to the capital fund and payments of contingent interest. To the foregoing considerations may be added the uncertain market- [fol. 583] ability of the new company's income bonds. At times of earnings below the level of the contingent interest requirements, such bonds are not likely to be salable on satisfactory terms. The main reason for their issue is that they tend to avert another bankruptcy. They give the security holder no right of foreclosure except upon default on the principal. With respect to the distribution of earnings they are in no better position than a preferred stock, and are in a worse position because they do not give their owners a voice in the management. If the circumstances require that bonds of this character be issued, as is the case here, it seems evident that the mortgage should be closed, and that provision should be made for a sinking fund. The Commission should approve the plan herein described, by which the means of future financing are provided in the new first-mortgage bonds and the new capital stock, and the only sinking fund is that for the retirement of the income mortgage bonds.

Mortgages on the Western Lines

Because of the showing that the earnings of the Denver's Western lines during the test-period year were more than adequate to cover interest charges on the bonds representing first liens on such lines, the debtor proposes that the Junction first 5's and the R. G. Western first-trust 4's be exchanged, in each case, for like principal amounts of new 3½-percent bonds issued under a mortgage secured by a first lien on the Junction property, the R. G. Western property, and the Denver's property lying between Dotsero and Rifle, and between Grand Junction and Crevasse, Colo., thus placing all lines west of Dotsero under the direct lien of the new Western division mortgage. An additional amount of new 3½ percent bonds, or a corresponding pay-[fol. 584] ment in cash, is offered to compensate the bondholders for the loss of interest to maturity on the present Junction bonds and R. G. Western bonds. Such maturities are December 1 and July 1, respectively, 1939. It is contended by counsel for the debtor that the holders of the bonds in question should get all that they could receive in a liquidation or foreclosure. The relatively high earning power of these lines, even on the basis of the cut-off mileage used in the committee's formula, is uncontroverted.

The committee considers that "nothing can duly recognize the position of these bonds short of a new first-lien bond for the total of their principal and accrued unpaid interest, the new bonds to be of such interest rate, maturity, and terms as to sell at par." In order to meet this requirement, as has already been stated, the committee proposes the issue of new series-A bonds having a relatively short term, a permissible interest rate up to 4½ percent per annum, and other features intended to assure the required market value. The committee considers it unnecessary to create a separate mortgage for the Western district.

Since the means of financing a cash payment of the present bonds are not available, a refunding operation, as is proposed by the debtor and the committee, is evidently necessary and proper. But the necessity for the creation of a separate new mortgage on the Western lines, or a separate series of new system bonds, is not entirely clear. Certainly the present bondholders are entitled to a better interest rate than 3½ percent on the new bonds offered them

under the debtor's plan. Under present conditions, however, they cannot reasonably expect to refund on a more favorable basis than 4 percent. The Western division bonds proposed by the debtor would not have a status prior to that of the other new first-mortgage bonds with respect [fol. 585] to the payment of interest. With respect to their lien position, based on the cost of reproduction of the mortgaged lines, less depreciation, it has not been shown that the value supporting each new Western division bond would be in excess of that behind a new first-mortgage bond secured by a lien on the lines of the system. As to the special class of new first-mortgage series-A bonds proposed by the committee, there is not sufficient assurance of their marketability to justify this separate issue, which might result in a considerable increase in the fixed charges of the new company due to the interest rate of 4½ percent allowable under this proposal.

Under the plan herein recommended, the Junction 5's and the R. G. Western first 4's may be exchanged for new first-mortgage 4-percent system bonds in amounts equal to the principal of the present bonds plus unpaid interest. The 4-percent interest rate will do full justice under present financial conditions. Equal justice with respect to the lien will be afforded, as is indicated by the fact, derived from the record, that the cost of reproduction of the Junction property, less depreciation, plus the value of lands and rights, corresponds to approximately $1,732 for each $1,000 of present bonds outstanding, while the cost, less depreciation, of the lines of the system corresponds to approximately $2,820 for each $1,000 of proposed first-mortgage bonds. On the same basis, each $1,000 first-trust bond of the R. G. Western represents a reproduction cost value of approximately $1,809, as compared with $2,820 for the new bond to be offered. Considering the matter in another aspect, the lines of the Junction and the R. G. Western are at present bonded, under first mortgages, at the rates of about $32,300 a mile and $36,600 a mile, respectively, while [fol. 586] the proposed system will be bonded at the rate of less than $20,000 a mile.

Finance Corporation Claims

On the basis of the collateral held by the Finance Corporation as security for its loans to the debtor, and the evi-

dence pertaining to the value of such collateral from earnings and otherwise, the claims of the Finance Corporation are clearly entitled to settlement in full, within the limits of the permissible capitalization. It is unnecessary to describe the evidence in this connection, which is voluminous and conclusive.

Equity in Present Stock; Future Control

Referring to the balance sheet of December 31, 1936, which is the latest one contained in the record, the capital liabilities of the Denver, other than capital stock, together with total current liabilities, deferred liabilities, tax liability, and other unadjusted credits, amount to $154,552,730. Deducting all book assets, other than those representing investments, the net amount was $140,560,266. For the combined properties, after intercompany eliminations, the corresponding figure was $153,314,502, which represents the net debt of the system on the basis of the consolidated balance sheet. Disregarding the balance sheet basis, the total debt outstanding as of December 31, 1936, consisting of equipment-trust obligations, trustees' certificates, loans, and the principal amount of bonds, with unpaid interest, was $157,056,723. According to the debtor's testimony, the capitalizable assets of the system approximate $243,000,000 (including the increase in investment in 1936), but such amount far exceeds any probable value of the physical properties and is unsupported by any evidence as to earning power.

[fol. 587] Both the debtor and the committee object to the use of the valuation data introduced, and the committee doubts that the law of the land requires that any consideration be given to physical values in determining the issues presented. The elements of rate-making value reported to the Commission, however, are pertinent in this connection, and consideration should be given to the finding, hereinbefore recommended, with respect to the cost of reproduction of the system property, less depreciation, plus lands and rights, working capital, and net additions and betterments during 1936. With respect to earning power, in no year since 1930 was the combined net income available for the payment of interest sufficient to cover the charges on the debt outstanding on December 31, 1936, nor, of

course, on the greatly increased debt outstanding on June 30, 1938. In no year has the present Denver company paid a dividend on either class of stock. The average system income available during the 4-year period 1932-35, after intercompany eliminations, if capitalized at 4½ percent, would amount to $80,154,000; the average for the period 1934-36, in large part reflecting the operation of the cutoff, would amount to $69,293,000. The earnings calculated by the debtor to represent the test-period, similarly capitalized, would amount to $87,250,000, and those estimated for a future normal year would represent a capitalization of approximately $138,120,000.

Between December 31, 1936, and June 30, 1938, the total debt of the system, including unpaid interest, increased from $157,056,723 to about $170,900,000, or by about $13,843,000. To that extent any equity for the Denver's present stock has become more remote.

The debtor contends that a substantial equity is represented by its stock, arguing that the bankruptcy of the road [fol. 588] was a temporary condition due to the heavy capital investment in the Dotsero cutoff. The committee, on the other hand, takes the position that there is no equity in either class of stock and that the plan cannot fairly allocate any securities outright to the present stockholders.

The Commission should find that the equity of the holders of the debtor's common stock and of the holders of its preferred stock has no value and that the holders of claims in classes 1 and 2 are, therefore, not entitled to participate in the plan.

Both the debtor and the committee propose that certain considerations be given for the acquisition of stock control of the new company by the present proprietary companies, as has been described. It may be urged that the proprietary companies have valid rights in the premises, that the public interest supports the proposal, and that the consideration passing may be adequate to overcome any question of prior rights. If the Commission shall find, however, that the present stockholders have no equity and are not entitled to participate in the plan, and the new voting stock should be distributed to the present bondholders under some equitable plan, it is not the function of the Commission to make any other provision for the future control of the system. That matter should rest with the new own-

ers, who, in an appropriate later proceeding, may present their proposal to the Commission for its consideration, in the event it is desired that the present interests or others shall exercise control of the new company.

Proposed Allocation of Securities

Conforming to the new capital structure recommended, the assignment of new securities would be as shown in the following table.

[fol. 589]

	Present (June 30, 1938)	Proposed new securities: First-mort. 4% bonds, series A	Inc. mort. 4½% bonds	Pref. 5% stock $100 par value	Common no par value (shares)
Equipment obligations[1]	$2,795,000				
R. R. Credit Corp. loan[2]	278,000				
Chase Bank loan[2]	1,706,448				
Trustees' certificates	5,000,000				
Reorganization exp., etc.	1,009,000	$6,000,000			
Junction first 5's	2,308,333	2,308,333			
R. G. Western first 4's	17,316,600	17,316,600			
		(15%)	(40%)	(45%)	
R. G. Western consol. 4's	17,342,000	2,601,300	$6,936,800	$7,803,900	
			(40%)	(40%)	(20%)
D. & R. G. consol. 4's	39,585,000		15,834,000	15,834,000	79,170
			(40%)	(40%)	(20%)
D. & R. G. consol. 4½'s	7,530,760		3,012,304	3,012,304	15,062
			(10%)	(35%)	(55%)
D. & R. G. W. ref. & imp. 5's	14,250,000		1,425,000	4,987,500	78,375
			(10%)	(35%)	(55%)
D. & R. G. W. ref. & imp. 6's	2,450,000		245,000	857,500	13,475
					(50%)
D. & R. G. W. general 5's	37,135,800				185,679
R. F. C. notes	11,959,469	11,959,469			
D. & R. G. W. pref. stock	16,445,600				
D. & R. G. W. common stock (shares)	300,000				
D. & S. L. bonds	11,234,000	11,443,675			
D. & S. L. stock (shares)	460			46,000	
Totals		$51,629,377	$27,453,104	$32,541,204	371,761

[1] To remain undisturbed.

[2] To be extended.

[fol. 590] The holder of each $1000 Junction first-mortgage bond should receive approximately $1,154, principal amount, of new first-mortgage series-A bonds, representing 100 percent of the principal of such bond, plus unpaid interest, together with a cash payment of $10, representing one year's interest on such bond at 1 percent.

The holder of each $1000 R. G Western first-trust bond should receive approximately $1,140, principal amount, of new first-mortgage, series-A bonds, representing 100 percent of the principal of such bond, plus unpaid interest.

The holder of each $1000 R. G. Western consolidated mortgage bond should receive approximately $172.50, principal amount, of new first-mortgage bonds, $460, principal amount, of new income mortgage bonds, and $517.50, par value, of new preferred stock, such amounts representing 15 percent, 40 percent, and 45 percent, respectively, of the principal of such bond, plus unpaid interest.

The holder of each $1000 D. & R. G. consolidated mortgage 4-percent bond should receive approximately $464, principal amount, of new income mortgage bonds, $464 par value, of new preferred stock, and 2⅓ shares of new common stock, such amounts (taking the common stock at $100 a share) representing 40 percent, 40 percent, and 20 percent, respectively of the principal of such bond, plus unpaid interest.

The holder of each $1000 D. & R. G., consolidated mortgage 4½-percent bond should receive approximately $472, principal amount, of new income mortgage bonds, $472, par value of new preferred stock, and 2⅓ shares of new common stock, representing 40 percent, 40 percent, and 20 percent, respectively, of the principal of such bond, plus unpaid interest.

[fol. 591] The holder of each $1000 Denver refunding and improvement mortgage 5-percent bond should receive approximately $119, principal amount, of new income mortgage bonds, $416, par value, of new preferred stock, and 6½ shares of new common stock, representing 10 percent, 35 percent, and 55 percent, respectively, of the principal of such bond, plus unpaid interest.

The holder of each $1000 Denver refunding and improvement mortgage 6-percent bond should receive approximately $122.50, principal amount, of new income mortgage bonds, $429, par value, of new preferred stock, and 6¾ shares of new common stock, representing 10 percent, 35

percent, and 55 percent, respectively of the principal amount of such bond, plus unpaid interest.

The holder of each $1000 Denver general mortgage bond should receive approximately 6¼ shares of new common stock, representing one-half share for each $100 of principal and interest.

The foregoing amounts of new securities, being mostly in odd figures, due to the accumulations of interest on the present bonds and other circumstances, will require the issue of scrip for sums less than $100, in the case of bonds, and for fractional shares of stock. Provision for the issue of such scrip should be made in the plan.

The holders of the capital stock of the Salt Lake outstanding in the hands of the public should receive, in exchange therefor, an equal number of shares of the preferred stock of the new company. There is no logical ground upon which these stockholders are entitled to mortgage bonds. The system earnings computed by the debtor for the test-period year correspond to approximately $4.21 a share for the Salt Lake stock, but the highest actual earn- [fol. 592] ings of the Salt Lake in any one year since 1929 were only $1.79 a share, and in other years since 1929 they were much less than $1 a share. The equity in the Salt Lake stock on the basis of the cost of reproduction of the property, less depreciation, plus lands and rights, is approximately $62 a share. These facts indicate that an exchange for the preferred stock of the new company would provide amply for the minority stockholders of the Salt Lake. The price which the Denver paid for its acquisition of the majority stock, four or five years ago, is not applicable to the present situation.

The secured note held by the Railroad Credit Corporation should either be paid in cash or extended, at the discretion of the reorganization committee. If the latter plan be adopted, the note of the new company should be in face amount equal to the indebtedness to the Credit Corporation as of June 30, 1938, after any distributive credits which may apply thereon, bearing interest at 4 percent per annum, and payable in six months. The new securities issuable as collateral for such note, representing those for which the present collateral would be exchangeable under this proposed plan, would consist of approximately $264,800 of new income-mortgage bonds, $264,800 of new pre-

ferred stock, and 1,324 shares of new common stock. Upon payment of such note the pledged securities should be canceled.

The secured note held by the Chase National Bank should be canceled and a new note or new notes issued in face amount equal to that of the present note, plus interest accrued to June 30, 1938, such notes to mature in 10 years, and to bear interest semiannually at the rate of 4 percent per annum, contingent upon and limited by the total payment of interest and dividends on the new securities to be pledged. Interest on such note or notes should be cumula- [fol. 593] tive. The new securities issuable as collateral, representing those for which the present collateral would be exchangeable under this proposed plan, would consist of approximately $609,000 of new income mortgage bonds, $2,133,600 of new preferred stock, and 33,528 shares of new common stock. Upon payment of the new note or notes, the pledged securities should be canceled.

The plan should provide for the redemption of all the Salt Lake bonds outstanding, the call price for the first mortgage 4's being 101 and that for the income mortgage 6's being 102. For this purpose, an equivalent amount of new first-mortgage series-A bonds, namely $11,443,675, should be allocated. In order to provide for the payment of the trustees' certificates outstanding, for the expenses of the reorganization, and for working capital, $6,000,000 of new first-mortgage series-A bonds should be issuable in or after reorganization. In respect of the settlement of the claims of the Finance Corporation, there should be allocated approximately $11,959,469 of new first-mortgage series-A bonds, equal to the face amount of the notes outstanding plus accrued interest to June 30, 1938.

The Finance Corporation has indicated that it would accept the committee's plan, which provided for the payment of the debt to that corporation by the issue of certain amounts of new first-mortgage series-B bonds and new income mortgage bonds, and further provided that the Finance Corporation should underwrite the refunding of the Salt Lake bonds. With respect to the $6,000,000 of new first-mortgage, series-B bonds which the committee proposed to make available for the payment of trustee's certificates, reorganization expenses, etc., the plan provided that as many of such bonds as would be required should

[fol. 594] be issued, and sold at such price as might be approved by the Commission.

The financing referred to in the preceding paragraph, involving a total of about $29,400,000, should be arranged, if possible, through private banking channels, the new first-mortgage bonds being sold at or near par. The Commission should require, as part of its plan that, if a commitment on the part of responsible private parties is not obtainable the Finance Corporation will (1) accept the first-mortgage series-A bonds of the reorganized company in full settlement of its claims against the debtor and the secondary debtor, and (2) that it will underwrite the refunding of the two classes of Salt Lake bonds, together with the cash requirement of $6,000,000, on the basis of $17,443,675 of new first-mortgage series-A bonds to be issued for these purposes. The testimony does not indicate that any additional new money will be needed in connection with the reorganization.

General unsecured claims, approved by the court, should be paid in cash or by the issue of common stock, as has been stated. The new company may take any action with respect to the lease or agreement with the Northwestern Terminal Railroad Company as may be lawful under the terms thereof and may adjust, compromise, or settle any claim arising from such action. Except as to this lease, and the agreements, leases, and trackage contracts between the companies to be consolidated, the new company should assume the contracts of such companies which are executory, in whole or in part, and have not been disaffirmed, with the approval of the court, and should also assume any executory contracts made by the trustees of the debtor or secondary debtor, with the approval of the court, which, by their terms, do not terminate at the conclusion of the reorganization proceeding.

[fol. 595] With respect to both the aggregate amount of new securities and the proportionate amounts assigned, the foregoing plan differs materially from the plans presented. It does not represent the application of any one formula but is the result of a review of the entire record.

As a result of a revision of its formula, the debtor materially altered the allocations first proposed, and considered the revision an improvement. The committee's formula as has been explained, constitutes a further revision, based on allowing 42 percent of the constructive

mileage assigned to the cut-off by the debtor, a different conclusion as to the liens of the mortgages with respect to certain equipment and the earnings of the Junction line, and the recognition of accrued fixed-interest charges whether or not earned. In the course of developing these formulas and applying their results concretely, a large number of highly controversial issues were raised at the hearings and were discussed at length in the briefs filed by the parties. The matters in dispute and the contentions made are too numerous to be treated in detail in this report. Several of these matters are legal in character, such as the priority of mortgage liens, and the adjudication of such questions is not properly within the Commission's jurisdiction. However, in view of the departures from the formulas which seem unavoidable these questions are not of great weight. Many other matters open a wide field for judgment and opinion, such as the proper mileage to be allowed to the cut-off, the rental to be charged for use of equipment, the method to be used in computing the profit or loss in operating branch lines, the distribution of terminal expenses, and the basic assumption with respect to earnings which shall represent the relative earning power of each part of the system. As is stated by counsel in the committee's brief, "Obviously, any formula for the segregation of earnings between, and the ascertainment of the relative net income of, various mortgage divisions [fol. 596] offers opportunity for unlimited debate. Many refinements can be requested which may in turn serve as starting points for other inquiries equally protracted".

When an attempt is made to modify either of the formulas by giving effect to the increase in debt since January 1, 1937, and to the capital structure herein specified, the results can by no means be assumed to be those which the debtor or the committee would have reached if they had been governed by the revised data. Under these circumstances, the application of either of the formulas of record would be of doubtful propriety, even if the Commission were in possession of the detailed calculations used in working out these formulas. Consideration has been given, however, to the methods followed and to the assignment of new securities proposed by the debtor and the committee, respectively. It has also been given to the possible effect of distributing the Finance Corporation debt according to the parts of the system for which such debt was incurred.

The distribution of that portion of the test-period income which would remain for the junior bonds, after payments of interest on the prior obligations, has received attention. From all these studies, but without attempting to adjudicate the contested points in detail, the foregoing plan is recommended as meeting the requirement that due recognition shall be afforded to the rights of each class of creditors and stockholders, and that the plan shall not discriminate unfairly in favor of any class.

Miscellaneous Provisions

The debtor proposes that the plan of reorganization, as finally adopted, shall be carried out by it. A board of directors, to consist of 15 members, is contemplated, of which 9 and the president of the new company would be elected by the holders of the common stock.

[fol. 597] The committee suggests a board of 12 directors, of whom 7 would be elected by the holders of class-B common stock. It proposes that the plan shall be carried out by a reorganization committee, consisting of seven members, who would act as voting trustees pending the disposition of the new class-B common stock. All the new common stock, whether of class A or class B, would be issued to the reorganization committee, to be held by it for a period of three years, subject to conditions prescribed.

Since the plan herein recommended provides neither for the issue of stock warrants nor for the vesting of control of the new company otherwise than in the hands of its stockholders, there would seem to be no necessity for the formation of a voting trust. A reorganization committee, to supervise the carrying out of the plan, is desirable owing to the large number of interests and financial operations involved, and the approved plan should provide for such a committee. It should consist of five members, of whom two should be designated by the Insurance Group committee, one by the trustee under the indenture securing the refunding and improvement mortgage bonds, one by the trustee under the indenture securing the general mortgage bonds, and one by the Finance Corporation. The reorganization committee should be authorized to fill vacancies created by death, resignation, or otherwise, preserving the representation of the several interests as before. The committee should determine the method of carrying out the plan,

subject to approval by the court, and the form; and, except as herein otherwise expressly provided, the provisions of all mortgages, bonds, coupons, charter, by-laws, stock certificates, and all other instruments necessary or desirable in carrying out the plan. The number of directors of the new company and the manner of their election should be provided in the new charter or in an amendment of the present charter.

[fol. 598] The plan should be carried out either by vesting the properties of the Denver and its affiliated companies, together with the property held by the trustees, in the reorganized Denver corporation or in a new corporation created for the purpose of this reorganization, and by the execution by the reorganized or new company of the new mortgages and the issue by it of the new securities contemplated under the plan. The effective date of the plan should be June 30, 1938, as of which date the reorganized or new company should be deemed to have come into possession of the properties. The merger or consolidation of the Salt Lake should be effected in a manner to be determined by the reorganization committee, subject to the approval of the Commission and the court.

The provisions of the committee's plan hereinbefore described imposing conditions as to the manner of acceptance of the plan and providing under certain conditions for the sale of the properties at public auction at an upset price should be omitted from the approved plan. Aside from the fact that the statutory majorities required to accept a plan (in the case of creditors, more than two thirds in amount of the total of the allowed claims of the class reported as voting on the plan) are not followed, the proposals may be interpreted as an intended indirect limitation upon the provisions of section 77 permitting the court to confirm a plan, under certain conditions, without a majority of more than two-thirds of each class. The committee's proposal appears to embody a requirement that the two-thirds vote of certain classes shall be a condition precedent to the submission of the plan to the other classes. Insofar as this constitutes an attempted modification of the statutory duty of the Commission to submit an approved plan to all classes, it is objectionable. The committee's proposal makes the sale of the properties at public auction contingent upon whether the plan is accepted by [fols. 599-601] the statutory majority of every class and con-

firmed by the court without the acceptance by all the classes. This is quite different from a direct provision in a plan for a sale at an upset price and the distribution of the proceeds. Furthermore, the proposal described is lacking in essential details as to the securing of funds to effectuate bidding at a public auction of the properties and as to the allocation and issuance of new securities and the payment of claims under the several contingencies of a public sale. For these reasons the proposal is not deemed to provide adequate means for the execution of the plan, and Division 4 should so find. Under these circumstances it is unnecessary for Division 4 to decide whether the provisions of section 77(b) (5) relative to sale of all or any part of the property of a debtor and the distribution of the proceeds derived therefrom could legally be applied to the purposes sought by the committee's proposal.

Division 4 should approve the plan of reorganization and consolidation herein described and should find that such plan will meet with the requirements of section 77(b) and (e) of the Bankruptcy Act, as amended, and be compatible with the public interest; and should render a report and enter an order approving such a plan. Modification of the accounts of the debtor and the other companies involved, as a result of the plan finally adopted, should be subject to the approval of the Commission, and the reorganized or new company should submit its journal entries for such approval before making its permanent accounting records.

In view of the provisions of section 77(f), the Commission, when a plan shall have been finally adopted, should give consideration to the granting of such authority as may be requisite and appropriate for the execution of the plan, including the issue of securities.

Filed Aug. 12, 1938—1:30 P. M. George A. H. Fraser, Clerk.

[fol. 602] IN UNITED STATES DISTRICT COURT

OPINION—December 6, 1940

The Denver and Rio Grande Western Railroad Company, as debtor, and the Denver and Salt Lake Western Railroad Company, as secondary debtor, filed November 1, 1935,

petitions in this court alleging they were unable to pay their debts as they matured, and desired to effect a plan of reorganization under Section 77 of the Act of July 1, 1898, entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States," as amended. On the same day the petitions were filed the court entered orders approving the petitions as properly filed, and authorized and directed the debtor to operate and maintain both properties under the supervision of the court. Copies of the petition and the orders were duly transmitted by the Clerk of this [fol. 603] court to the Interstate Commerce Commission. Orders were made on July 17, 1936, and September 4, 1936, fixing the time within which, and the manner in which, claims and interests of the creditors and stockholders should be filed, and the division of creditors and stockholders into classes for the purpose of the plan and its acceptance.

On November 18, 1935, Wilson McCarthy and Henry Swan were appointed Trustees for the debtor. These appointments were ratified by Division 4 of the Interstate Commerce Commission. On December 19, 1935, the court appointed Raymond L. Sauter Trustee of the secondary debtor, the Denver and Salt Lake Western Railroad Company. This appointment was likewise ratified by the Interstate Commerce Commission. April 29, 1936, upon petition of the debtors, an order was made extending the time for filing a plan of reorganization under Section 77 (d) to and including August 1, 1936. On July 29, 1936, a proposed plan of consolidation and reorganization, as of January 1, 1937, was filed with the court and the Interstate Commerce Commission by the debtor. This plan included the Denver and Rio Grande Western, the Salt Lake Western, the Denver and Salt Lake Railway Company (the Moffat Road), the Rio Grande Junction Railway Company, and the Goshen Valley Railroad Company.

In accordance with the procedure prescribed in Section 77, and after due notice, public hearings on the plan began and were held before the Interstate Commerce Commission in October, 1936, and in February, April and June, 1937. On [fol. 604] June 15, 1937, a plan of reorganization, including the companies covered by the debtor's plan, was filed by the so-called "Insurance Group Committee," an intervener, of which George S. Van Schaick was chairman. In addition to this group other interveners included the trustees under certain mortgages, the Security Research Bu-

reau, the Untermyer family, Chase National Bank of New York, the Railroad Credit Corporation, various chambers of commerce and boards of trade, the Reconstruction Finance Corporation and others.

An order of this court of November 23, 1936, divided the claims and interests of the creditors and stockholders into the following classes: class 1, common stock; class 2, preferred stock; class 3, claims entitled to priority under Section 77(n); class 4, claims which would have been entitled to priority over existing mortgages or other liens if a receiver in equity had been appointed for the property; class 5, claims not included in classes 3 and 4, entitled to priority by the laws of any state or the United States; class 6, bonds issued under the Consolidated Mortgage of the Denver and Rio Grande Railroad Company, dated July 15, 1886, and owned by the debtor; class 7, bonds issued under the First Trust Mortgage by the Rio Grande Western Railway Company, dated July 1, 1889, and assumed by the debtor; class 8, bonds issued under the First Consolidated Mortgage of the Rio Grande Western Railway Company of April 1, 1889, and assumed by the debtor; class [fol. 695] 9, bonds issued under the first mortgage of the Rio Grande Junction Railway Company, dated December 1, 1889, assumed by the debtor; class 10, bonds issued under the debtor's Refunding and Improvement Mortgage, dated February 1, 1924, and bonds issued under the Improvement Mortgage of the Denver and Rio Grande Railroad Company, dated June 1, 1888, which may be held to be pledged under the aforesaid Refunding and Improvement Mortgage; class 11, bonds issued under the debtor's General Mortgage, dated February 1, 1924, and bonds issued under the Improvement Mortgage of the Denver and Rio Grande Railroad Company which may be held to be pledged under the aforesaid Refunding and Improvement Mortgage; class 12, secured notes of the debtor held by the Railroad Credit Corporation, the Chase National Bank of the City of New York, and the Reconstruction Finance Corporation, and the debt of the Denver and Salt Lake Western Railroad Company, represented by the debtor's demand note pledged by the Denver and Salt Lake Western Railroad Company as security for a loan from the Reconstruction Finance Corporation; and class 13, all other claims not coming within any of the aforesaid specific classifications.

By report and order of July 11, 1939, the Commission approved a plan of reorganization for the Denver and Rio Grande Western Railroad Company and the Denver and Salt Lake Western Railroad Company, secondary debtor, [fol. 606] The Denver and Salt Lake Railway Company, the Rio Grande Junction Railway Company and the Goshen Valley Railroad Company. Thereafter, on September 1, 1939, petitions for modification of the approved plan were filed by the so-called Insurance Group Committee, by Guy A. Thompson, Trustee of the Missouri Pacific Railroad Company, the Central Hanover Bank and Trust Company, Trustee under the First Trust Mortgage of the Rio Grande Western Railway Company and the First Mortgage of the Rio Grande Junction Railway Company, the United States Trust Company of New York, Trustee under the Consolidated Mortgage of the Denver and Rio Grande Railroad Company, the Guaranty Trust Company of New York, Successor Trustee under the First Consolidated Mortgage of The Rio Grande Western Railway Company, the City Bank Farmers Trust Company, Trustee under the General Mortgage of The Denver and Rio Grande Western Railroad Company, the Moffat Tunnel Improvement District and Moffat Tunnel Commission, and the Security Research Bureau, all interveners herein, and by the debtor and its subsidiaries.

By order of the Commission the parties to the proceeding were permitted to file briefs and reply briefs, and thereafter the Commission, having reconsidered its prior report and order, came to the conclusion that certain provisions of the plan should be modified and certain other provisions, as to which some question had been raised, should be retained without change. And on April 2, 1940, the Commis- [fol. 607] sion entered an order setting forth and approving a modified plan of reorganization for the Denver and Rio Grande Western Railroad Company and the Denver and Salt Lake Western Railroad Company, effective June 30, 1938, and revoking and superseding the order of July 11, 1939.

This order having been certified and filed in the court on April 11, 1940, on May 6, 1940, we ordered all parties in interest to file their objections to the plan of the Commission and their claims, if any, for equitable relief on or before July 1, 1940, and set said objections and claims for equitable

relief for hearing on Monday, July 29, 1940, and providing for time for filing briefs, and that notice of the order should be given to all parties.

In accordance with said order the matter came before this court July 29, 1940, for hearing upon the specific written objections to the plan and claims for equitable treatment (Tit. 11, Sec. 205, subdivision(e), U. S. C. A.). Testimony was taken every day up to August 12, 1940, at the conclusion of which, and before argument, at the suggestion of counsel, an informal conference with counsel was held in the court chambers, and at the request of counsel the court indicated its views as to certain features for a proper plan of reorganization (see interim memorandum of August 30, 1940), stating therein that any plan approved by the court should be within the framework of the Interstate Commerce Commission plan; that it strongly favored the consolidation of the Salt Lake and the Denver—which all the testimony supported—and setting out other requirements [fol. 608] of any plan the court would approve, and emphasizing that the amount of fixed charges in any plan the court would approve was that fixed by the Interstate Commerce Commission, to-wit, $29,403,144.00 of fixed interest first mortgage bonds, total fixed charges $1,278,539.00.

As to the allocation of the first mortgage bonds, the court indicated the three divisional mortgages, i.e., Rio Grande Western First Trust 4s, Rio Grande Junction First 5s and part of the Denver and Rio Grande Consolidated 4s and 4½s, "should share the new fixed interest first mortgage bonds with the Reconstruction Finance Corporation notes on such a proportionate basis as the Rio Grande Junction rate of bonded indebtedness per mile for each of such mileage, thereby awarding new fixed interest first mortgage 4s to these three divisional first mortgages, and to the Reconstruction Finance Corporation notes as follows: Rio Grande Western First Trust 4s, $4,557,000.00, 30%; Rio Grande Junction First 5s, $1,000,000.00, 50%; Denver and Rio Grande Consolidated 4s and 4¼s, $1,012,675.00, 2½%; Reconstruction Finance Corporation notes, $5,389,794.00, 50%."

This allocation of first mortgage bonds, differing from the Interstate Commerce Commission plan, was based on traffic density between Dotsero and Salt Lake City. It is, however, recognized that the Rio Grande Junction 5s, for instance, cover sixty miles of track running from Rifle to

Grand Junction. This particular mileage produces sub-
[fol. 609] stantially no local business. Its earning power is due to its strategic position as a bottle-neck connecting the main line west into Salt Lake with the two eastern lines; Dotsero to Denver and Dotsero to Pueblo, respectively. The system could afford, if necessary, to cut it off, turn it over to its bondholders, and duplicate this mileage with a better and straighter line at a cost of less than $3,000,000.00. In addition, the mileage between Dotsero and Salt Lake City covered by these mortgages is dependent upon the system as a whole for equipment, terminal facilities, shops and overhead organization and personnel.

The court is still of the opinion expressed in the interim memorandum, that the amount of fixed charges of any approved plan should not exceed the interest on the first mortgage bonds in the amount called for by the Interstate Commerce Commission plan. I agree with the views of the Commission as to the probable earnings (printed record Vol. 5, part 4, p. 5104, et seq.).

According to the so-called Eastman Formula said to have been suggested to Congress by Commissioner Eastman, fixed charges under a reorganization plan should not exceed 80% of the net available for interest in the three worst years of the last ten. Applying this to the Rio Grande and the Salt Lake for the ten years 1930 to 1939, we find the worst years were 1938, 1937 and 1934 in the order named. The net available for interest in this period totaled for the three years $7,461,000.00—an average of $2,487,000.00 per
[fol. 610] year. Eighty per cent of this would be $1,989,600.00, without any provision for capital fund, and, of course, the property cannot be operated without some expenditures chargeable to operating expenses. The above figure $7,461,000.00 includes $2,885,035.00 chargeable to operating expenses in connection with improvements. Deducting this, the net available for interest would be reduced to $4,575,965.00, or an average of $1,525,000.00, 80% of which would be $1,220,000.00 as a permissible fixed charge, with no provision for capital fund.

Attention is again called to the fact that the revenue per ton mile for 1939 was $.01018. The corresponding figure for the first eight months of the current year is $.00953, and for the month of September, 1940, $.0088, indicating no improvement in prospective earnings except through increased bridge traffic. In dollars and cents the total esti-

mated operating revenues for the year 1940, up to and including November 14, 1940, are $22,567,580.00—an increase of $865,983.00, or 3.99% over the corresponding period in 1939. This on approximately 255,000 carloads handled to November 23rd this year as compared with 238,000 carloads for the same period in 1939.

Number of carloads handled for the period January 1st to November 14, 1940, was 246,519, as against 230,337 for the same period 1939—an increase of 16,182 cars, or 7.03%, with an increase in dollar revenue of only 4.98%. The increase in bridge traffic for 1939, compared with 1938, shown in the debtor's report to the Interstate Commerce [fol. 611] Commission is:

	Cars	% of Total	Tons	% of Total	Revenue	% of Total
1938	71,084	29 24	1,779 417	22 41	$7,068,516	33 05
1939	81,301	31 34	2,021,174	23 50	8,124,985	35 82

The first six months of 1940 show 38,367 carloads of bridge traffic, compared with 32,794 for 1939—an increase of 5,573 cars, or approximately 17%, with an increase of but 9.59% for all traffic. These figures indicate the increased importance of bridge traffic to this system, and are at the same time primarily responsible for the reduction in net ton mile revenue. This change in traffic from local to bridge is reflected in the average length of haul in September, 1940, of 314.6 miles, compared with 290.9 miles in 1939—an increase of 8.15%.

This large growth of bridge traffic in relation to total tonnage emphasizes the need for continued improvement in track and equipment to enable the debtor to maintain the shorter schedules between the Pacific Coast and Missouri River forced by competitors; for if this property were relegated to its strictly local business, the earnings would not justify fixed charges in any such amount as is contemplated.

The building of this railroad system began in 1871, and a narrow gauge line from Denver to Pueblo was completed in 1872. Thereafter the main line was gradually extended west up the Arkansas River from Pueblo, and reached Leadville in 1880. All of the construction thus far had been narrow gauge, but the threat of competition resulted in a [fol. 612] third rail being laid from Denver to Pueblo, completed in 1881. The property went into receivership July

12, 1884. This receivership was concluded in 1886 when the Denver and Rio Grande Railroad Company acquired the property at foreclosure sale.

In the following year the road was built to Glenwood Springs, Montrose to Ouray, and from Pueblo south to Trinidad and Walsenburg. In 1889, in connection with the Colorado Midland Railroad, it organized the Rio Grande Junction Railway Company, which constructed a line from Rifle Creek to Grand Junction. By the fall of 1890 connection had been made at Grand Junction with the Rio Grande Western, thus forming a standard gauge line from Denver to Ogden, Utah.

In 1905 construction of the Western Pacific line from Salt Lake to the Pacific Coast began to take shape; $50,000,000.00 of construction bonds were sold and work begun. The necessity of this line was the result of the failure of the Central Pacific—owner of a line from Ogden, Utah, to San Francisco—to remain neutral as between the Denver and Rio Grande—then part of the so-called Gould system—and its competitor, the Union Pacific. About that time the Union Pacific interests had acquired control of the Southern Pacific—which in turn owned the capital stock of the Central Pacific. This made it necessary for the Rio Grande system to have its own line from Salt Lake to the Coast. The story is told in the opinion of the Supreme Court in [fol. 613] U. S. v. Union Pacific Railroad, 226 U. S. 61, at pp. 90-91, where the court said that the consolidation of the Union Pacific with the Southern Pacific "practically destroyed the carrying trade from Ogden to the east for the Rio Grande system and necessitated the construction by the latter road of a new connection for California points." The Western Pacific issued its capital stock to the Denver and Rio Grande and the latter guaranteed to pay so much of the interest on the Western Pacific bonds as the Western Pacific net earnings might fail to provide, and also guaranteed the full payment of the principal at maturity.

In March, 1915, the Western Pacific defaulted on its bonds and went into receivership, and suit against the Denver and Rio Grande on its guaranties was instituted in New York by the mortgage trustee. Judgment went against the Denver for $38,000,000.00, and receivership for the Denver and Rio Grande followed. The property was sold at the upset price of $5,000,000.00, and was bid in by Western Pacific interests and reorganized as The Denver and Rio Grande

Western Railroad Company. This receivership ended July 31, 1921. Another receivership followed on August 1, 1922. In the course of this latter proceeding a large rehabilitation program was undertaken under the direction of the court. The main line between Denver and Salt Lake was put in splendid condition, many grades and curves eliminated, new rail laid and ballasted and new power bought. This receivership terminated December 20, 1924, and the existing company, The Denver and Rio Grande Western Railroad [fol. 614] Company, took over the property, and completed and supplemented the improvement program initiated by the court—all at a cost of $40,000,000.00.

Beginning with 1930 operating revenues on the system began to decline, maintenance was largely curtailed, and the property suffered accordingly, so at the start of this Section 77 proceeding it was estimated by disinterested experts that six or seven million dollars was necessary to make up the deferred maintenance and rehabilitate the right-of-way, and $4,000,000.00 for improvements and additions to rolling stock. At the time of the last previous receivership the rail on the main line between Denver and Salt Lake was ninety pounds a section, and the depth of ballast averaged only eight inches on the main line.

In this proceeding the Trustees, under the authority of the court, have laid 242.18 miles of 112 pound rail, 33.47 miles of 131 pound rail, principally on curves, have rebuilt and eliminated many bridges and culverts. In addition five standard gauge passenger locomotives, ten standard gauge freight type locomotives, 1500 steel box cars and 155 cars of various types, such as ballast, tank acid cars, etc., have been purchased. Three hundred stock cars have been built in the company's shops, together with fifteen air-conditioned parlor coaches and seventy-eight automobile cars, and all equipment has been rehabilitated. 255.12 miles of main line has been ballasted. The cost of these improve- [fol. 615] ments, which includes large additions to the shops, yards, tracks and sidings, and improvements of many various kinds, is $23,134,484.00, financed in part by sale of Trustees' Certificates and Equipment Trust Certificates. In addition the operating personnel has undergone a thorough rehabilitation.

One of the outstanding accomplishments of the Trustee management has been the installation of a testing and research laboratory equipped with Magnaflux units and equip-

ment for making photoelastic studies to detect in the laboratory causes of failures due to high stress concentrations, equipment for making photo-micrographs for testing the strength of various materials, and equipment making accelerated tests to determine aging properties, that detect incipient failures in metal equipment, etc. The result is that all materials—including those formerly bought by trade names—are now thoroughly tested before being put in use, and it has been found that car trucks, rails, locomotive rods, pins, rail joint bars and materials of various classifications too numerous to list have in many cases been found defective by laboratory tests. The intangible savings resulting therefrom are impossible to evaluate, because there is no way of ascertaining the damage to property and loss of lives that might have resulted from failure of these materials in use on line. This laboratory has attracted much attention, and other railroads are availing themselves of its services. Cash subsidies are being made to this work by industrial manufacturing companies for research work of benefit to the debtor, as well as the industry generally.

[fol. 616] The net result of the Trustees' operations is that the road today is in the best condition physically it has ever been. Furthermore, as a result of the time and attention directly given to their job by its Trustees, new transcontinental business has been secured, and the standing and reputation of the system among shippers and the public generally whom it serves has been vastly improved. The extensive improvement program referred to has not included every facility necessary to enable it to serve its public and compete successfully. Certain realignments of track, new signalling devices and new passenger equipment similar to that being adopted by railroads throughout the country generally is most necessary, not only to improve service, but to cut the costs of operating, especially on the narrow gauge part of the system. Furthermore, attention in the near future must be given to the question of new power for the operation between Denver and Bond through the Moffat Tunnel, preliminary studies for which are now under way. These factors must be kept in mind in dealing with the question of prospective earnings and possible savings in operation.

The debtor's main line from Denver to Salt Lake via Pueblo and Tennessee Pass is indirect, very long, with

heavy grades. This has prevented it from acting as a bridge carrier of general merchandise from the Pacific Coast to Missouri River points and Chicago. Following a marked decline in local business, such as mining, lumbering, etc., several years ago it became very evident that if the prop- [fol. 617] erty was to exist it must develop overhead or bridge traffic. It was in an attempt to correct this situation the debtor was wrecked financially by its guarantee of the bonds issued to construct the Western Pacific Railroad, with the resulting financial difficulties already enumerated.

The Moffat Road—the Denver and Salt Lake Railroad Company—had been built 232 miles from Denver to Craig, Colorado. The line crossed the Continental Range at James Peak at an elevation of 11,660 feet, which made all year operation practically impossible. To correct this the Moffat Tunnel Improvement District was created in 1922 as a local municipal improvement district to build a tunnel under James Peak to be financed by a property assessment on the entire district, which included the City of Denver and other counties through which the Moffat Road runs. The Tunnel was thereafter built as a local improvement at a cost of approximately $15,000,000.00, for which the District bonded itself.

The Supreme Court of the United States in sustaining the constitutionality of the Moffat Tunnel Act had this to say concerning it as a matter of public policy, Millheim v. The Moffat Tunnel Improvement District, 262 U. S. 710:

> "Furthermore, while the saving of the Moffat road to the people of the State seems to have been the prime motive which induced the passage of the Act, it specifically provides for the use of the tunnel by any and [fol. 618] all railroads and other public utilities to the extent of its capacity, each paying an annual rental apportioned to the respective values of the separate uses, and constituting a fair and just proportion of the total amount required to pay interest on the bonds, provide for their retirement and maintain the tunnel. And the evidence strongly indicates that the tunnel may and will be used, to like advantage by the Denver & Rio Grande Railroad, extending from Denver to Salt Lake City with a great shortening and improvement of its line * * * These are all public purposes of much importance. We conclude that the purpose for which

the tunnel is to be constructed is not private, but public, and as such warrants the exercise by the State of the power of taxation."

At two points on the Colorado River west of the Moffat Tunnel the main lines of the Moffat Road and the Denver and Rio Grande are only thirty-eight or thirty-nine miles apart. In 1928 the Denver and Salt Lake, through its subsidiary, the Denver and Salt Lake Western Railway Company, planned to construct a line of railroad down the river from Orestod on the Moffat line to connect with the Rio Grande at Dotsero. For the purpose of building this so-called cut-off the Denver and Salt Lake Western borrowed $3,631,000.00 from the Reconstruction Finance Corporation. Work was commenced in November, 1932, and the line opened for operation on June 15, 1934.

[fol. 619] About this time the Denver and Rio Grande, having acquired control of the capital stock of the Moffat Road, acquired by agreement trackage rights through the proposed tunnel into Denver, and took over the ownership of the Denver and Salt Lake Western—the connecting link between Dotsero and Orestod—built by the Denver and Salt Lake Western, following permission so to do granted by the Interstate Commerce Commission. This joint trackage agreement provides that the Rio Grande should pay the Moffat Road as rental for use of its line and the Moffat Tunnel $300,000.00 a year, plus one-half of five and one-half per cent per annum for additions and betterments to the property, one-half of the rental of the Moffat Tunnel, and one-half of all betterments and improvements to the Moffat Tunnel, and certain other charges. The Rio Grande also borrowed from the Reconstruction Finance Corporation $3,110,850.00 to enable it to acquire all the rest of the stock of the Salt Lake Railroad Company.

In 1935 the Denver and Rio Grande Western Railroad owned and operated 1628 miles of standard gauge track and 752 miles of narrow gauge track—a total mileage of 2380. By use of the Salt Lake track from Dotsero through the Tunnel to Denver, the debtor shortened its line from Denver to Salt Lake City approximately 175 miles with greatly reduced grades and curvature. At the same time expenses were pared and necessary maintenance greatly curtailed, with the result that its ability to perform its duty as a public utility became greatly impaired.

[fol. 620] The recurrent bankruptcy reorganizations of this property naturally invite an examination of its financial history. It is evident therefrom that the reorganization structures, drawn up by the debtor's bankers and approved by this court in past equity receivership proceedings, have not been able to stand the strain of the excessive fixed interest charges called for and the insistence by bondholders on payment thereof, irrespective of whether earned or not.

The record discloses that previous to the initiation of this particular proceeding the debtor borrowed money from the Reconstruction Finance Corporation, with the consent of the Interstate Commerce Commission, to pay current taxes and interest not earned on underlying mortgage liens—a practice that cannot be defended.

The bulk of long time financing of the major American railroad systems has been largely through the issuance of bonds, to the exclusion of stock. It is recognized more and more by students of such matters that too large a proportion of railway financing should not be in the form of fixed interest bonds, and that investors in the securities of our transportation systems should be considered more as stockholders entitled to dividends out of earnings, rather than creditors legally entitled to demand payment of interest and principal on fixed dates, regardless of whether earned or not.

The history of this property, like that of the many other railroad systems, demonstrates that, as a result of this prac-[fol. 621] tice, during times of depression and bad business the road has found itself unable to meet interest charges or the principal of its debt as it has matured. The bondholders and their trustees have forced foreclosures and receivership proceedings, thus in effect exercising their undoubted right to have the property sold for cash and receive the proceeds up to 100 per cent of their claims. But the net result in each case has been that while the form has been followed the property has not actually been sold for cash, and the bondholders have received no payment on their principal. In each instance they have merely exchanged old securities for new ones in a reorganized company—often forced to take a junior lien. In addition the excessive costs of these court proceedings have been capitalized into new securities and put ahead of the bondholders' claims. The security-holders have thus paid the costs of these receiver-

ships and the rehabilitation of their property while in the hands of the court.

There is much justification, therefore, for the observation by writers on the subject that a fixed interest bond is not really a binding promise to pay the principal and interest of the bond, but contains an implied option in favor of the railroad borrower to pay the bondholder with a junior bond and some stock in place of cash perhaps in a reorganized company. So that a railroad bond therefore becomes merely a claim to a portion of the income and corpus of the property that takes precedence over the claims of other creditors.

[fol. 622] This is the fourth time this property has been in this court for reorganization, the second one under me. The history is always the same, namely, earnings that should properly be expended on maintenance and improvement of the property in order that it may better perform its duty to the public as a carrier of goods and persons for hire has been used to pay interest not earned. Thus the court in each proceeding has found it necessary to, and has, borrowed large sums of money, and has used it to rehabilitate the property, thus in effect restoring and capitalizing ahead of the old existing debts the funds wrongfully diverted under private management. Having in mind the history of this particular property and the failure of the last reorganization, the desire of the court to promulgate a plan of reorganization that will keep the property out of the bankruptcy court in the future and enable it to meet its obligations and perform its duties to the communities it serves should be apparent to everyone.

With a large proportion of the railroad mileage of the country in the hands of federal courts under Section 77, there is strong likelihood that if the many pending reorganizations now before the Interstate Commerce Commission and the courts are not successful, Section 77 will be replaced by a far more drastic procedure with results far less satisfactory to security-holders, who seem loath to recognize and take the loss they have suffered as the result of a short-sighted policy they and their mortgage trustees have been parties to in the past.

[fol. 623] All parties should bear in mind that Section 77 expresses the public policy which led to its enactment, and demands that the operation of railroads be continued for the benefit of the public, regardless of the interests of their

creditors and stockholders. The first objective of a reorganization is to make the railroad a sound, economic unit, able to operate its business successfully and pay a reasonable return to those having an interest in it. Furthermore, any plan approved should aim to cure the financial and business ailments of the debtor, and should not merely provide immediate relief, but be drastic enough to assure continued solvency of the enterprise, even under unfavorable conditions.

On October 31, 1940, a conference was held in my chambers with Eugene A. Schmidt, Jr., and Richard K. Paynter, Jr., of New York City, who had requested permission of the court to present and discuss the so-called Discussion Plan, which represented the consensus of opinion of the parties in interest, tentatively agreed upon at a conference held in Washington, pursuant to the suggestion of the court in its interim opinion, in which the court requested that the parties agree upon a plan for presentation to the court before the next hearing set for October 21, 1940. The court consented to such conference upon the consent in writing of all parties to the record, except the Reconstruction Finance Corporation, which was represented by W. W. Sullivan. The proceedings of said conference are in the record. [fol. 624] At the conclusion, the hearing, which had been postponed until November 13th, was formally set over to January 6, 1941, on the understanding the parties could confer again with the court if they care to.

Consideration having been given to the plans of the debtor, the Insurance Group, the Interstate Commerce Commission and the so-called Discussion Plan, the testimony at the hearing and the record certified by the Commission, the function and duty of the court are no less here than they are in equity receivership reorganization, in respect to which the Supreme Court in Case v. Los Angeles Lumber Co., 308 U. S. 106, at 115, said:

> "'Every important determination by the court in receivership proceedings called for an informed, independent judgment.'"

And, p. 125, Case v. Los Angeles Lumber Co.:

> "Once the property is in the hands of the court private rights as respect that res are subject to the superior

dominion of the court, and are to be adjudicated pursuant to the standards prescribed by the Congress."

And, p. 126 of the same case:

"Furthermore, stockholders and other junior interests may be excluded from any plan of reorganization if the court finds that the debtor is insolvent."

And, p. 114:

"The fact that the vast majority of the security holders [fol. 625] have approved the plan is not the test of whether the plan is a fair and equitable one."

I approve the findings and the plan of the Interstate Commerce Commission certified by its order of April 2, 1940, with certain adjustments within the framework of that plan, which I shall now outline.

These adjustments are occasioned primarily by the proposed sale to the debtor's connecting carriers to the east, to-wit, the Missouri Pacific, connecting at the Pueblo gateway, the Chicago, Burlington & Quincy at Denver, and the Chicago, Rock Island & Pacific at Colorado Springs, half way between Denver and Pueblo, of a new issue of common stock in the reorganized company having sole voting power, for the sum of $10,000,000.00 in cash. This stock should be distributed in the following proportions: Missouri Pacific forty per cent, Burlington forty per cent and the Rock Island twenty per cent, to insure that no one of the three should have control of this voting stock. The receipt of this cash by the reorganized company would reduce to that extent the amount of new fixed interest bonds to be sold under the Interstate Commerce Commission plan for cash to the Reconstruction Finance Corporation, and thus increase the amount of new fixed interest bonds available under the latter plan for distribution to the various divisional mortgages of the debtor (in the proportion outlined in that plan), after making equitable provision for the old loans made by the Reconstruction Finance Corporation to the debtor, with the result that the call upon that corpora- [fol. 626] tion to purchase new bonds for cash will be substantially less than the amount called for by the Interstate Commerce Commission.

If the so-called Discussion Plan represents an effort on the part of certain parties to this proceeding to reach an agreement within the framework of the plan, and within the views of court expressed in the interim memorandum, it succeeds in neither. The order of the Interstate Commerce Commission dated July 11, 1939, Finance Docket No. 11002, Denver and Rio Grande Western Railroad Company Reorganization, reads in part as follows:

> "The grand total of cash thus required will be approximately $17,443,675.00 subject to such change or adjustment as may be found reasonable and proper by the Reorganization Committee and approved by the Court. The Reconstruction Finance Corporation shall file with the Court prior to the referendum on the plan a commitment that it will, upon appropriate authority by this Commission, purchase at par approximately $17,443,675.00 of the new first mortgage series 'A' bonds or such other principal amount thereof as may be needed by the *above mentioned cash financing.*"

The Discussion Plan should be and is rejected, primarily because it fails to provide the necessary new cash required. It merely suggests the willingness on the part of the connecting carriers to purchase for $10,000,000.00 the new [fol. 627] equity stock controlling the management. Granted this commitment is affirmed to the satisfaction of the court, the cash funds necessary to carry out the Interstate Commerce Commission plan would still be short by approximately $7,443,675.00. The Discussion Plan is also rejected because it provides for a relative distribution of the senior securities, to-wit, the first mortgage bonds of the reorganized company, to the various mortgage divisions of the debtor—wholly inconsistent with the distribution provided for in the Interstate Commerce Commission plan. Its proposed treatment of the Rio Grande Western First Trust 4s at 100 per cent and the Denver and Rio Grande Consolidated 4s and 4½s at five per cent is manifestly unjust to the consolidateds.

While a scaling down of all claims must be expected in any reorganization, the Interstate Commerce Commission plan is a little too drastic in asking the Consolidated bondholders to subordinate their prior lien on that part of the line—Pueblo, Dotsero and to the west, which carries the

heaviest traffic—in favor of the issue of the new first mortgage bonds in which they have no participation. Such treatment hardly "affords due recognition to the rights of each class of creditors or stockholders."

Furthermore, we are unable to accept the Discussion Plan for the reason it has no reasonable chance of success. The holders of the Denver and Salt Lake bonds are obviously better off with their present security, income and market value than they would be after the exchange proposed in the [fol. 628] Discussion Plan. These bonds are neither due nor in default as to the payment of principal or interest. Their position is such that they feel it is not necessary for them to be represented before the court in these proceedings.

In our interim memorandum it was indicated the extent to which we thought these Reconstruction Finance Corporation loans had been too favorably treated at the expense of the Divisional First Mortgages, and urged the interested parties to attempt to reach a voluntary agreement among *themselves within* the outlines of the Interstate Commerce Commission plan and the court's views as expressed. For the reasons stated the Discussion Plan does not represent such an agreement, and is neither within the framework of the Commission Plan nor does it comply with the views of the court as expressed.

The Interstate Commerce Commission plan, as I have indicated, gives very favorable treatment to the old advances of the Reconstruction Finance Corporation to the debtor. Nevertheless its collateral, consisting principally of the securities of the Denver gateway, is essential competitively to the future operation, perhaps even to the existence of the reorganized company, and because of the dependence of the success of the plan upon it furnishing the new money necessary to put any plan into effect, it is entitled to preferential treatment.

As observed, the new factor injected into the situation is [fol. 629] a suggestion that the connecting carriers on the east are willing to pay $10,000,000.00 for voting control of the reorganized company. This will correspondingly lighten the burden of the Reconstruction Finance Corporation to furnish new money to carry out the Interstate Commerce Commission plan, and for that reason it is hoped the Reconstruction Finance Corporation, relieved of the necessity of furnishing $10,000,000.00 of new cash, will be content

with somewhat less favorable treatment on its old advances to the debtor corporation.

Another adjustment the court believes proper is the so-called Capital Fund of $750,000.00. This sum, while believed to be inadequate, should be set aside and earmarked as a special cash fund and used only to pay the costs of additions and betterments to plant, properly chargeable to capital account, which have not been previously certified to the Trustee under the new first mortgage as the basis in whole or in part for the issue of additional bonds, and also marked for operating expenses incident to improvements, and may not under any circumstances be used for the payment of dividends or interest on any debts, fixed or contingent. This fund may be reimbursed to the extent possible from the proceeds from the sale of additional bonds issued to capitalize the cost of additions or betterments, which have been paid out of this fund.

Any unused portion of the Capital Fund should be carried forward for use in subsequent years, provided that any funds not so used within five years from the date of [fol. 630] their origin may be employed in the discretion of the Board of Directors for the retirement of the funded debt of the company.

Likewise the annual depreciation charge on equipment must be unquestionably set aside in a special cash fund and used only to take care of interest and principal payments on Equipment Trust obligations now outstanding or hereafter issued, and to take care of in whole or in part the purchase, building or improvement of equipment. Any unused portion of this fund should be carried forward for use as above outlined in subsequent years, provided that any part of said fund not used may, in the discretion of the directors, be transferred to the Capital Fund above described.

It is for the ultimate interest for each class of security holders, as well as the public, that any plan approved should err on the side of conservatism rather than on the side of overissue of securities, particularly of fixed interest obligations. The above provisions in respect to capital fund and depreciaion would eliminate as far as possible the temptation of the future managements to bleed the adequate upkeep of the property in order to pay interest or dividends—a temptation that past managements have been unable to resist—and in addition insure the necessary upkeep and maintenance of roadway and equipment at all times.

The fact is that the Rio Grande system has expended for additions and betterments to roadway an average of [fol. 631] $1,489,420.00 annually during the past fifteen years, while charges to operating expenses incident to improvements on the Rio Grande have averaged $882,835.00 annually for fifteen years. Charges to operating expenses incident to improvements on the Salt Lake have averaged $80,735.00 annually for the past twelve years. Thus over an extended period charges to operating expenses incident to improvements on the consolidated properties have averaged $963,570.00. Any new management expending this capital fund in the efficient manner the Trustees have used in their maintenance work, i. e., by mechanical methods and in a permanent manner, can make considerable savings in the expenditure of these capital and depreciation funds.

In reference to the allocation of the securities of the reorganized company, the Interstate Commerce Commission plan calls for a maximum of $29,403,144.00 in first mortgage four per cent fixed interest bonds. (a) $7,443,680.00 (the exact figure) of these bonds should be first set aside for sale at par to the Reconstruction Finance Corporation for the remaining cash necessary to carry out the terms of the Interstate Commerce Commission plan. (b) Special treatment should be given to the old advances of the Reconstruction Finance Corporation, partly as a consideration for the purchase for cash at par of the bonds specified in (a) above, and partly because of the strategic value of the collateral pledged to secure the same.

Attached hereto and marked Exhibit A is a distribution [fol. 632] of securities sheet, with the adjustments hereinabove suggested, carried through to the junior securities as of January 1, 1941, all within the framework of the Commission plan. After giving effect to these adjustments, the securities of the reorganized company are allocated to the various mortgage divisions and creditors in proportion and in accordance with the priorities as determined by the Commission plan. It is believed that the effective date of the plan should be moved forward to the termination of the next preceding semi-annual period.

The plan of reorganization (printed record p. 5164) and M of the order of the Interstate Commerce Commission based thereon (printed record p. 5196) provide for a reorganization committee of five members to carry out the plan.

In the opinion of the Commission (printed record p. 5164), such committee is necessary.

Subsection f of Section 205, Title 11, U. S. C. A., provides "Upon confirmation of the plan the debtor, and any other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall, put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and control of the judge."

There is nothing in the Act specifically referring to a reorganization committee, except perhaps Subsection c-12, which provides for the compensation of reorganization managers and committees, but the Act seems to assume such [fol. 633] a committee will be created to carry out the plan, but, as seen, it must be under the supervision and control of the judge. Furthermore, the Commission plan delegates to the court the right to correct any defects, supply any omissions or reconcile any inconsistencies that may be necessary to carry out the plan effectively.

The property of the debtor and secondary debtor is located almost wholly in the States of Colorado and Utah, and I therefore firmly believe the provisions of the plan for a reorganization committee should be modified so as to require that members of the committee representing the various interests, as provided for, shall be residents of Colorado or Utah, subject to the approval of the Commission or the court, or both, and that all meetings and proceedings of the committee should be held in Denver, Colorado, at the main office of the debtor, and that counsel for the committee, if any are necessary, shall be appointed by the court. These modifications are necessary in the opinion of the court to promptly expedite the carrying out of any plan finally adopted, and closing the proceeding and restoring the debtor to its rightful owners.

It is suggested in the brief on behalf of the Insurance Group Committee that, looking to practical results, any reorganization of a railroad requires readjustments of numerous contractual rights and interests between various groups of creditors, to the end that the final plan may be fair and equitable to all creditors and compatible with the public interest. It is suggested that these results cannot readily [fol. 634] be attained under the legalistic procedure at arm's length. It is further stated that at the proper stages in

a proceeding such as this it is desirable that the public interest be definitely represented by some authoritative agency. The writer of the brief further states it is to be regretted the statute did not provide for some such informal meeting of the representatives of the various classes of security holders participating in the hearings, and by conference and negotiation under the direction of the Commission seek to arrive at an adjustment of these questions and any other issues involved.

This suggestion is a happy one, and I suggest that if upon assembling in Denver, January 6th it is thought best that all the parties go into a conference, the court will be glad to name some one to represent the court and public to see if a plan consonent with the views here expressed and the Interstate Commerce Commission plan cannot be agreed upon. Otherwise the court may disapprove the plan and return it to the Commission for the reasons herein stated.

J. Foster Symes.

December 6, 1940.

(Here follows 1 paster, folios 635-636)

[fol. 635–636]

EXHIBIT "A"

The Denver and Rio Grande Western Railroad Company Reorganization Plan

Distribution of New Securities as of January 1, 1941

Present Liabilities	Principal Amount[1]	Accrued Interest	Total	Cash from Connecting Carriers	Undisturbed	50 Yr. 1st Mortgage 4's Fixed	Percent	75 Yr. Income 4½% Bonds, Series A	Percent	Preferred Stock 5%	Percent	Common A	Percent	Common Ball to Connecting Carriers for $10,000,000 Cash
Trustees' Certificates	$5,000,000	$	$ 5,000,000	$ 5,000,000	$	$		$		$		$		$
Reorganization Expense	1,000,000		1,000,000	1,000,000										
Equipment Trusts[2]	5,789,000		5,789,000		5,789,000									
Rio Grande Western 1st Trust 4's	15,190,000	3,645,600	18,835,600			5,488,112	29.14%	13,347,488	70.86%					
Rio Grande Western 1st Cons. 4's	15,080,000	3,770,000	18,850,000							18,850,000	100.00%			
Rio Grande Junction Bonds, 5%	2,000,000	558,333	2,558,333			745,419	29.14%	1,812,914	70.86%					
D&RG 1st Cons. 4's and 4½'s	41,169,000[3]	10,911,365	52,080,355			5,311,112	10.20%	14,112,375	27.10%	9,574,150	18.38%	23,082,718	44.32%	
D&RGW Ref. and Imp. 5's and 6's	20,096,000[4]	6,405,000	26,501,000			2,702,551	10.20%	7,181,058	27.10%	4,871,790	18.38%	11,745,601	44.32%	
D&RGW Gen. Mortgage 5's	29,808,000	10,681,200[5]	40,489,200									3,076,581	7.60%	
R.F.C. Notes	10,691,850	2,161,934	12,853,784			7,712,270	60.00%	5,141,514	40.00%					
Denver and Salt Lake Bonds[6]	11,234,000		11,443,680[6]	4,000,000		7,443,680								
Chase National Bank Loan[6]	1,500,000	478,458	1,978,458		1,978,458									
Railroad Credit Corp. Loan[7]	206,291		206,291		206,291									
Denver and Salt Lake Minority Stock	4,111 shares		411,100					411,100						
Total			$197,996,801	$10,000,000	$7,973,749	$29,403,144		$42,006,449		$33,295,940		$37,904,900		$10,000,000
Annual Fixed Charges					Note 8	$1,176,126								
Annual Contingent Interest								$1,890,290						
Annual Preferred Stock Dividend										$1,664,797				

[1] Excluding bonds pledged with R. F. C., but including bonds pledged as collateral for Chase Bank loan ($6,096,000 R&I 5's) and Railroad Credit Corp. loan ($662,000 D&RG 1st Cons. 4's).

[2] Including $1,260,000 Equipment Trust Series G Certificates authorized by Court, to be issued February 1, 1941.

[3] Excluding $7,452,000 of contingent interest accrued in five year period ended February 1, 1929, and excluding 50% payment which was made on coupon due February 1, 1934.

[4] Excluding $1,266,000, principal amount, pledged with R.F.C., to be canceled.

[5] Includes redemption premium of 1% on First Mortgage Bonds and 2% on Income 6's.

[6] New securities to be issued as collateral for Chase Bank note in exchange for bonds now pledged: New 1st 4's, $816,102; Income 4½'s, $2,168,271; Preferred Stock, $1,470,584; Common A, $3,546,043. Interest on Chase Bank note computed in accordance with claim of Bank at 6% from date petition filed under Sec. 77, as provided by laws of State of New York. Subject to final determination.

[7] New securities to be issued as collateral for Railroad Credit Corp. loan in exchange for bonds now pledged: New 1st 4's, $85,680; Income 4½'s, $226,047; Preferred Stock, $153,311; Common A, $369,682. In computing amount due Railroad Credit Corp., amount due D&RGW as participating carrier in Marshalling and Distributing Plan has been deducted.

[8] Interest on undisturbed securities will be treated as follows: Interest on Equipment Trust Certificates, 1941, $138,076, reducing annually as principal installments are paid, to be paid in cash. Interest on Chase Bank note payable out of interest on collateral. Interest on Railroad Credit Corp. note, $8,251.64 per annum.

Filed Dec. 14, 1940—
George A. H. Fraser, Clerk.

[fol. 637] PETITION OF CENTRAL HANOVER BANK AND TRUST COMPANY AS TRUSTEE

EXHIBIT "A"

"DISCUSSION PLAN" FOR D. & R. G. W.

A. Origin

In his interim order of August 30, 1940, Judge Symes clearly indicated that he expected the parties to attempt the negotiation of an agreed plan, for presentation to the Court before the next hearing.

After receipt of the Judge's aforesaid interim order, the R. F. C., at the instance of the Insurance Group Committee, made available to the latter a study which had been made by its Railroad Division, as the basis for such a compromise plan. The present proposal has been evolved after several conferences between the R. F. C. and the Group's subcommittee. Referred to herein as the "Discussion Plan", it embodies the allocations determined upon by that subcommittee, with certain modifications suggested by the representatives of the R. F. C.

It is presented at this meeting in the hope that it will be acceptable to all interests as a compromise plan which may be carried out with a minimum of delay and without expensive litigation.

B. Capitalization

The Discussion Plan is based on the assumption that the connecting railroads desiring control will purchase $4,000,000 Series B Income 4½s at par and 60,000 shares of Class B Common Stock (having the exclusive power of ordinary management somewhat along the general lines of the Insurance Group 1937 plan) at $100 per share or for $6,000,000. This $10,000,000 cash will be used to retire $5,000,000 Trustee's Certificates, furnish $1,000,000 working capital, and provide for the cash offer hereinafter stated to the D. S. L. Income Bonds.

[fol. 638] In so far as it has been practicable to do so and at the same time produce a plan that will have a chance of meeting with the approval of security holders, the plan is based upon the I. C. C. plan, in this respect complying with Judge Symes' interim order. Total capitalization of

approximately $147,000,000 fixed charges, and total fixed and contingent charges are substantially the same as in the original I. C. C. plan.

The capital structure is to be slightly different in that there will be two series of Income bonds—$6,905,788 Series A 4s and about $36,000,000 Series B 4½s (includes $1,387,967 which is the contingent portion of the Chase 4% note). There will be about $5,000,000 less Preferred stock and there will be two classes of Common stock with the total Common stock being increased by 60,000 shares of no par Class B Common which offsets the reduction in Preferred stock, and 43,970 shares of no par Class A Common.

The new capitalization is stated on Schedule 1 hereto and annual requirements thereunder are stated in Schedule 2 hereto. The series A Incomes will have a term of 20 years and bear interest at 4% (cumulative for 4 years) payable after the Capital Fund, but before interest on Series B, and will be exclusively entitled to a sinking fund of ¼% on maximum prior issue of Income Bonds (payable after Series B interest); upon retirement of Series A, the sinking fund will apply to Series B.

C. Allocations

Detailed allocations are shown on Schedule 3 hereto. Attention is called to the following:

The plan provides that the R. G. W. First Trusts and the Rio Grande Junction Firsts be given 100% of their [fol. 639] claim for principal and interest in new First 4s as compared with 100% in Income bonds which the I. C. C. Plan proposed.

Under the plan, the R. F. C. will receive approximately 1% of its claim (of $11,177,179) in cash, about 58% in First 4s, and about 41% in Income A 4s and will not be called upon to furnish any cash for the reorganization. The amount of cash R. F. C. will receive under the plan will be increased and the amount of First 4s decreased to the extent that the D. S. L. Income bondholders accept new First 4s in lieu of cash, as hereinafter set forth.

The Eastern Consol 4s and 4½s are to receive 5% of their claim in new First 4s or at approximately the same rate per mile for the mortgage's 60 odd miles in the Western end of the system as the rate per mile for which new First

4s are offered the Junctions. The I. C. C. Plan gave no First 4s to the Eastern Controls but did propose 35% in Incomes. Since the Discussion Plan has given 5% to this mortgage in new First 4s, their allocation of Series A and Series B Income 4½s is reduced to 31.5%, which makes a total of 36.5% in bonds. The allocation of Preferred stock to the Eastern Consols is 25%, as in the I. C. C. Plan, and 32.7% has been allotted in Class A Common stock (reduced from 40% in I. C. C. Plan because of increase of 1½% in bonds).

The Refunding and Improvement 5% and 6% bonds were given, in the I. C. C. Plan, the same treatment as was given the Eastern Consols and the Discussion Plan accordingly accepts this measure of relative value and offers the R. & I.'s the same improved treatment proposed for the Eastern Consols except that an additional 5% in Preferred stock is allocated to R. I.'s to compensate for the Series A Incomes given to the Eastern Consols.

[fol. 640] The Western Consol 4s are offered 36.5% in Income B 4½s and 63.5% Preferred stock as against no Income bonds in the I. C. C. Plan, which gave them 100% in Preferred stock. Since the I. C. C. Plan gave the Western Consols 100% in the next junior security to that offered The Western Firsts, it might be contended they should have 100% in Income bonds. However, since other plans proposed practically the same treatment for the Eastern and the Western Consols in the most senior security offered these mortgages, the proposal in the Discussion Plan provides for this similarity of treatment. Under the plan the Eastern Consols, the Western Consols, and the R. & I.'s each receive 36½% in new bonds. This is a concession to the R. & I's, giving them treatment better than they are given in the I. C. C. Plan, which they supported at the court hearing.

The D. & R. G. W. General 5s are offered much better treatment than in the I. C. C. Plan, 42.5% of their claim in Class A Common stock.

The R. C. C. and the Chase Bank notes are to be extended, as was proposed by the I. C. C., but their collateral will be improved because of the better treatment given the securities now pledged. These note holders either advised the Court that the less favorable I. C. C. Plan was acceptable, or failed to oppose.

The D. S. L. First 4s outstanding in the amount of $1,500,000 and maturing in 1950 are to remain undisturbed instead of being called, as was proposed by the I. C. C.

The D. S. L. Incomes are to be offered 40% in cash or new First 4s and 60% in new Income B 4½s, contingent upon the acceptance of this offer by substantially all the [fol. 641] holders. To the extent that these holders elect to take new First 4s, in lieu of cash, additional cash will be available for application against the R. F. C. claim.

The D. S. L. minority stockholders were offered 100% of their par value in Income 4½s by the I. C. C. and this treatment is continued.

The treatment accorded the security holders who are offered Preferred is improved over the I. C. C. Plan because, among other things, there is to be a smaller amount of Preferred outstanding with resultant greater earnings per share from a similar amount of income available for Preferred dividends.

October 28, 1940.

[fol. 642]

SCHEDULE "I"

The Denver & Rio Grande Western Railroad Company

Capitalization in "Discussion Plan"

(Effective Date of Plan—June 30, 1938)

	Principal		
	Amended I. C. C. Plan	Original I. C. C. Plan	Discussion Plan
Equipments	$2,795,000	$2,795,000	$2,795,000
First Mortgage 4's	29,403,144	29,403,144	29,336,500
R. C. C. Loan 1½%	278,000	278,000	278,000
Chase Note 4%	.....	1,749,917	[1]361,950
D. & S. L. Extended First 4's	.....	.....	1,500,000
Total Fixed Interest Debt	$32,476,144	$34,226,061	$34,271,450
Income Mortgage A 4's	.....	.....	6,905,788
Income Mortgage B 4½'s	42,006,449	42,006,449	34,327,506
Chase Note 4%[2]	1,749,917	.....	1,387,967
Total Contingent Int. Debt	$43,756,366	$42,006,449	$42,621,261
Total Debt	$76,232,510	$76,232,510	$76,892,711
Preferred Stock 5%	33,295,940	33,295,940	27,801,110
Common Stock Cl. A[3]	37,904,904	37,904,904	[4]35,956,615
Common Stock Cl. B[3]	.....	.....	6,000,000
Grand Total[5]	$147,433,354	$147,433,354	$146,650,436

[fol. 643]

Schedule 1 (Cont'd)

	Per Cent of Capitalization		
Fixed Int. Debt[1]	22.0	23.2	23.4
Cont. Int. Debt	29.7	28.5	29.0
Total Debt	51.7	51.7	52.4
Preferred Stock	22.6	22.6	19.0
Common Stock	25.7	25.7	28.6
Grand Total	100.0%	100.0%	100.0%

Note 1—Fixed interest proportion.
Note 2—Contingent interest proportion.
Note 3—No par value stock calculated at $100 per share.
Note 4—Based on value of $85 per share.
October 28, 1940.

[fols. 644-645]

SCHEDULE 2

The Denver & Rio Grande Western Railroad Company.

Annual Requirements in "Discussion Plan"

	Amended I. C. C. Plan	Original I. C. C. Plan	Discussion Plan
Equipment Trust	$98,243	$98,243	$98,243
1st Mtge. 4's	1,176,126	1,176,126	1,173,460
R. C. C. Loan 1½%	4,170	4,170	4,170
Chase Note 4%		69,997	14,478
D. & S. L. Ext. 1st 4's			60,000
Total Fixed Int.	$1,278,539	$1,348,536	$1,350,351
Capital Fund	750,000	750,000	750,000
Prior to Contingent Int.	$2,028,539	$2,098,536	$2,100,351
Income Mtge. A 4's			276,232
Income Mtge. B 4½'s	1,890,290	1,890,290	1,544,738
Chase Note 4%[2]	69,997		55,519
Total Contingent Int.	$1,960,287	$1,890,290	$1,876,489
Income Mtge. Sinking Fund	105,016[3]	105,016[3]	69,388[4]
Prior to Deferred Dividend	$4,093,842	$4,093,842	$4,086,228
Preferred Dividend 5%	1,664,797	1,664,797	1,390,056
Prior to Cl. A Common	$5,758,639	$5,758,639	$5,476,284

Note 1—Fixed interest proportion.
Note 2—Contingent interest proportion.
Note 3—¼ of 1% on outstanding Income Bonds plus interest on bonds in sinking fund.
Note 4—¼ of 1% on outstanding and pledged Income bonds without interest on bonds in sinking fund.
October 28, 1940.

[fol. 646]

SCHEDULE 3

The Denver & Rio Grande Western Railroad Company

Distribution in "Discussion Reorganization Plan"

	Total Claim June 30, 1938	Cash	Undistributed or Extended	50 Year 1st Mtg. 4's	20 Year Income 4's, Series A	75 Year Income 4½'s Series B	5% Pfd. Stock	Class A Common (Shares)	Class B Common (Shares)
Equipment Obligations	$2,795,000		$2,795,000						
R. G. Western 1st Trust 4's	17,316,600			$17,316,600(100%)					
R. G. Western Consol. 4's	17,342,000					$6,329,830(36.5%)	$11,012,170(63.5%)		
Junction 1st 5's	2,308,333			2,308,333(100%)					
D. & R. G. Consol. 4's	39,585,000			1,979,250(5%)	$1,979,250(5%)	10,490,025(26.5%)	9,896,250(25%)	$152,402.25(38.5%)	
D. & R. G. Consol. 4½'s	7,530,760			376,538(5%)	376,538(5%)	1,995,651(26.5%)	1,882,690(25%)	28,993.43(38.5%)	
D. & R. G. W. Ref. & Imp. 5's	14,250,000			712,500(5%)		4,488,750(31.5%)	4,275,000(30%)	47,737.50(33.5%)	
D. & R. G. W. Ref. & Imp. 6's	2,450,000			122,500(5%)		771,750(31.5%)	735,000(30%)	8,207.50(33.5%)	
D. & R. G. W. Gen. 5's	37,135,800							185,679.00(50.0%)	
R. F. C. Notes	11,177,179	$106,400(95%)		6,520,779(58.34%)	4,550,000(40.71%)				
D. & Salt Lake 1st 4's	1,500,000		1,500,000(100%)						
D. & Salt Lake Incomes	9,734,000	3,893,600(40%)				5,840,400(60%)			
D. & R. G. W. Trustees Ctfs.	5,000,000	5,000,000							
Chase Nat. Bank Loan	1,749,917		(1) 1,749,917	(2) 361,950		(3) 1,387,967			
R. C. C. Loan—1½%	278,000		278,000						
Reorgan. Expenses etc.	1,000,000	1,000,000							
D. & S. L. Minority Stock	411,100					411,100			
Purchasing Railroads						(4) 4,000,000(5)			(6) 60,000
Total		$10,000,000	$4,573,000(7)	$29,698,450(8)	$6,905,788	$35,715,473(9)	$27,801,110	$423,019.68	$60,000
Cumulative new capitalization (assuming common Stock Class A @ $85 and Class B @ $100 per share)			4,573,000	34,271,450	41,177,238	76,892,711	104,693,821	140,650,436	146,650,436
Fixed interest charges			162,413(10)	1,187,938(11)					
Cumulative fixed interest charges			162,413	1,350,351					
Capital fund				750,000					
Contingent interest charges					276,232	1,600,257(12)			
Cumulative interest charges and capital fund			162,413	2,100,351	2,376,583	3,976,840			
Sinking fund and preferred dividends						109,388(13)	1,390,056		
Grand total all charges and dividends			162,413	2,100,351	2,376,583	4,086,228	5,476,284		

Note 1—To be a 4% note secured by pledge of following for claim of $7,239,000 on pledged R. & I.'s—

New 1st 4's	$361,950	New 5% Pfd. Stk.	$2,171,700
New Inc. B 4½'s	2,280,285	New Com. Stk. "A"	27,250.65 shs.

Note 2—Excludes principal amount of Chase Note of $1,749,917 which for purposes of determining outstanding capitalization, fixed charges and contingent charges shall be considered as a 4% fixed interest note of $361,950 and a 4% contingent interest note of $1,387,967.

Note 3—For an aggregate of $10,000,000 cash to be applied as shown in Column entitled Cash.

Note 4—Consists of:

Equipment Trust	$98,243
Railroad Credit Corp.	4,170
D. & S. L. 1st 4's	60,000
	$162,413

Note 5—To be pledged but interest to be payable thereon.

Note 6—Includes $361,950 to be pledged under Chase Note—actual amount of First 4's to be outstanding will be $29,3..,500.

Note 7—Consists of $1,173,460 interest on $29,336,500 outstanding First 4's and $14,478 interest on $361,950 First 4's to be pledged under Chase Note.

Note 8—Portion of Chase Note upon which interest at 4% will be contingent depending upon payments made on collateral under Chase Note.

Note 9—Includes proportion of Chase Note upon which interest at 4% will be contingent—actual amount of income 4½'s to be outstanding will be $34,327,506.

Note 10—Consists of: $1,544,738 interest on $34,327,506 income 4½'s to be outstanding.
55,519 interest at 4% on $1,387,967 proportion of Chase Note to be contingent.
$1,600,257 Total

Note 11—¼ of 1 per cent on outstanding and pledged ~~Series A and~~ Series B income bonds.

October 28, 1940

[fol. 647] Memorandum Re Discussion Plan for D. & R. G. W.

It appeared to those attempting to work out a plan acceptable to all interests that after exploring numerous approaches to a compromise plan that there were two limitations which must be observed in order to work it out. First, that the charges and capitalization should conform to those set up by the I. C. C. Plan and second, that if that were done it would not be possible to use first mortgage bonds to raise the necessary new money. The Discussion Plan conforms to these two requirements and it is believed represents an equitable comparative treatment between the various issues.

The following important points should be noted concerning the capitalization of the Discussion Plan. The effective date is the same as that of the I. C. C. Plan namely, June 30, 1938. The total fixed interest debt is $34,271,450, which is only $45,399 more than that originally approved by the Commission, and the fixed charges have been increased only by the amount of $1,815 per annum, which is negligible. The total contingent interest debt to be issued is $42,621,261, against $42,006,449 as approved by the Commission, or $614,812 more. However, due to the use of a Series "A" bond, contingent interest charges have been reduced to an amount which is $13,801 less than those proposed in the I. C. C. Plan. The over-all charges on debt, fixed and contingent, have been reduced by approximately $12,000. Total charges prior to preferred dividends were $4,086,228 compared to $4,093,842 under the I. C. C. Plan.

It should also be noted that two material departures from the I. C. C. Plan do not violate the I. C. C. restrictions on capitalization, but bring about changes that appear to [fol. 648] be a real benefit to the property. The first change is that the income bonds are divided into two series, instead of being all of one as proposed by the I. C. C. A small issue, $6,905,788 Series "A" bonds bearing a 4% coupon, come due in twenty years and have the full benefit of the total income bond sinking fund. The second change is a decrease of approximately $5,500,000 in the amount of preferred stock to be issued, and the issuance in its place of 60,000 shares of Class "B" stock to be sold, together with $4,000,000 Series "B" income bonds, to the eastern connections for the purpose of raising the necessary $10,000,000 through non-fixed interest bearing securities.

Another departure from the Commission Plan is an increase of about 47,000 shares Class "A" common stock brought about by an effort to increase a quantitative recognition of general mortgage bonds.

To reiterate the essential points of the capitalization, the Discussion Plan fixed charges are $1,815 higher than that originally set by the Commission. But the charges through the contingent interest debt are $11,980 less. Total charges prior to the preferred dividends including capital fund and sinking funds are $7,614 less than under the I. C. C. Plan. Dividend requirements on the preferred stock are almost $275,000 less under the Discussion Plan. The total capitalization proposed, taking the no-par stock at $100 a share, is $152,995,521 against $147,433,354 proposed by the I. C. C. Plan. But, if the no-par is taken at $88.28 per share, the total capitalization is exactly that proposed by the I. C. C.

The negotiations with reference to the Discussion Plan have so far progressed only to the working out of difficult and controversial questions relating to capitalization and allocation of securities. There remain to be worked out, [fol. 649] however, details of provisions with reference to the earmarking of funds to be used only for expenses incident to roadbed and structures and for depreciation charges on equipment. It is believed that such matters can best be developed after informal discussion with the Court in order that a more clear understanding may be obtained as to his views on these matters.

Denver & Rio Grande Western

Extent to Which "Discussion Plan" Conforms with I. C. C. Plan

1. Effective date to be June 30, 1938—same as I. C. C. Plan.

2. Equipment Trusts of $2,795,000 to be undisturbed—same as I. C. C. Plan.

3. First Mortgage 4's to be outstanding—

Discussion Plan	$29,336,500.
I. C. C. Plan	$29,403,144.

4. R. C. C. Loan of $278,000 to be extended or paid—same as I. C. C. Plan.

5. Chase Note of $1,749,917 to be extended and secured by securities issuable for present collateral and interest of 4% to be paid if earned from payments on new collateral —same as I. C. C. Plan.

6. Total fixed interest debt and fixed charges thereon—

	Principal	Annual Charges
Discussion Plan	$34,271,450	$1,350,351
Original I. C. C. Plan	34,226,061	1,348,536
Amended I. C. C. Plan	32,476,144	1,278,539

It is important to direct attention to the fact that the I. C. C. found and stated in a tabulation on Page 61 (mimeographed copy) of its original report dated July 11, 1939, [fol. 650] that fixed charges should be $1,348,536 and the maximum capital fund deduction should be $750,000. These two would total $2,098,536. Then on Page 63, the I. C. C. stated—"Under the plan herein approved the fixed interest requirements, plus the maximum payment into the capital fund, would amount to $2,098,536, subject to some possible increase in the amount of first mortgage bonds issued in the reorganization, as has been indicated."

The I. C. C. report then states in the first complete sentence on Page 64 of the same report—

"We find that, after due consideration of the probable future earnings of the properties in the light of their earnings experience and other relevant facts, there will be adequate coverage of these fixed charges of the new company by the probable earnings for the payment thereof."

It so happened that the I. C. C. erroneously assumed it had allocated all the securities upon which these fixed charges of $1,348,536 would be payable. When the I. C. C. was advised of its error of including $69,997 interest on the Chase Note as a fixed charge instead of a contingent charge, it did not revise or change its finding that fixed charges of $1,348,536 would be adequately covered but made only the following statement on page 18 (mimeographed copy) of its report dated April 2, 1940—

> "In the summary of the approved plan, 233 I. C. C. 515,593, the annual interest on the extended (Chase) note was shown as a fixed interest charge. In the revised summary of the plan, shown later herein, such interest is included as a contingent charge."

In other words, the I. C. C. did not allocate all the fixed interest obligations which it found could be issued. In [fol. 651] view of the I. C. C.'s actual finding on the record, which the technical error did not change, the Discussion Plan adopted a fixed charge of $1,350,351 or within $1,815 of the I. C. C. finding.

7. Maximum annual deduction of $750,000 to be made for capital fund before payment of contingent interest—same as I. C. C. Plan.

8. Income Mortgage bonds to be issued in two series ($6,905,788 Series A 4's and $34,327,506 Series B 4½'s) but to be outstanding in the aggregate as follows—

	Principal	Annual Interest
Discussion Plan	$41,233,294	$1,820,970
Original I. C. C. Plan	42,006,449	1,890,290
Amended I. C. C. Plan	42,006,449	1,890,290

9. Total fixed and contingent interest debt and annual requirements thereon to be as follows—

	Principal	Annual Interest
Discussion Plan	$76,892,711	$3,226,840
Original I. C. C. Plan	76,232,510	3,238,826
Amended I. C. C. Plan	76,232,510	3,238,826

10. Annual sinking fund on Income Bonds to ¼ of 1% on outstanding and pledged Income Bonds plus interest on bonds in sinking fund, payable if earned after payment of contingent interest, amounting to—

	Sinking Fund
Discussion Plan	$109,388
I. C. C. Plan	105,016

11. Total charges prior to Preferred Dividends—

Discussion Plan	$4,086,228
I. C. C. Plan	4,093,842

[fol. 652] 12. Total Preferred and Common Stock, if the no par Common Stock in Discussion Plan, both Class A and Class B, be taken at the balancing figure of $88.28 per share, required to make the total capitalization under the Discussion Plan conform with the capitalization in the

I. C. C. Plan which calculated the no par Common Stock at $100 per share—

	Total Preferred & Common Stock	
	Shares	Arbitrary Stated Value
Discussion Plan	761,028	$70,540,643
I. C. C. Plan	712,008	71,200,844

13. Total capitalization to be as follows—

Discussion Plan:

Calculating no par stock at $100 per share	$152,995,521
Calculating no par stock at $88.28 per share	147,433,354

I. C. C. Plan:

No par stock at $100 per share	$147,433,354

October 28, 1940.

Denver & Rio Grande Western

Changes from I. C. C. Plan of Reorganization

1. Issuance of two series of Income Bonds under the Discussion Plan as follows:

$6,905,788 Series A 4%, due in 20 years, secured equally as to principal with $34,327,506 Series B 4½% bonds, due in 75 years, but entitled to interest prior to Series B bonds and also entitled to all Income Bond sinking fund payments until all Series A bonds have been retired. Interest on [fol. 653] the Series A and Series B bonds to be cumulative to the extent of 4 years interest as in the I. C. C. Plan but the rights to cumulation under the Discussion Plan do not begin until the plan actually becomes operative.

2. Issuance of $5,494,830 less Preferred stock under the Discussion Plan as follows:

	Preferred Stock
Discussion Plan	$27,801,110
I. C. C. Plan	33,295,940
Difference	$5,494,830

3. Issuance of two classes of Common Stock under the Discussion Plan or the creation of 60,000 shares of Class B stock to be sold for $6,000,000 to the eastern connecting lines desiring control, the proceeds to be used to retire $5,000,000 trustee certificates and to provide $1,000,000 working capital.

4. Sale of $4,000,000 Series B 4½% Income Bonds to the eastern connecting lines desiring control, the proceeds to be used to provide an alternate offer of $4,000,000 cash to the holders of Denver and Salt Lake Income bonds instead of $4,000,000 in new First Mortgage bonds of the reorganized company.

5. No new First Mortgage bonds to be sold for cash in contrast to sale of about $17,500,000 First Mortgage bonds to the R. F. C. under the I. C. C. Plan.

6. Denver and Salt Lake First Mortgage 4% bonds outstanding in the amount of $1,500,000 and due in 1950 to remain undisturbed whereas I. C. C. Plan provided for their redemption at the call price of 101 or for $1,515,000. This means the new Denver & Rio Grande Western First [fols. 654-655] Mortgage would not be a first lien on the Denver & Salt Lake property until they were redeemed which would probably be prior to 1950.

7. Distribution of new securities to the various security holders would be different, all as outlined in a separate schedule. This was required in order to have a Plan which would meet with the approval of all security holders.

October 28, 1940.

Filed Jan. 6, 1941—George A. H. Fraser, Clerk.

[fol. 656] In United States District Court

Opinion—March 6, 1941

RE D & R G

This matter was last before the Court January 6, 1941, for final arguments following the testimony given at the hearing in August. Since then numerous conferences of the parties have been held in New York. The Court, hap-

pening to be sitting in New York at the time by assignment, attended two of these on January 30th and 31st, and was furnished with the so-called FitzGibbon Plan, which was there discussed. This plan differs substantially from the Interstate Commerce Commission Plan, and the views [fol. 657] of the Court (Opinion of Dec. 6, 1940), particularly in the treatment of the Reconstruction Finance Corporation's claim, that of the Rio Grande Western First Trusts, the Rio Grande Junction bonds and the Denver & Salt Lake Income 6s.

This so-called FitzGibbon Plan is reputed to be agreeable to the so-called Insurance Group, and is the first indication of a recession from their insistence that the Rio Grande Western First Trust 4s and the Junction First 5s receive 100% in first mortgage bonds. They further indicated a willingness to take 78% of their claim in new first mortgage bonds and the balance in income bonds.

At all hearings before the Court since the Interstate Commerce Commission plan was certified, the objections of the so-called Insurance Group have been a stumbling-block to every suggested compromise plan, they insisting from the very beginning that the Western Divisional Mortgages receive 100% in first mortgage bonds. This group represents a vertical rather than a horizontal section of the debtors' obligations, and actually a small minority interest of any one issue.

The arguments, pro and con, on their objections have been repeated so many times it is unnecessary to set them forth here, but it is hoped they will not go so far as to oppose the plan herewith submitted, or any modification thereof the Commission may see fit to recommend, bearing in mind the main reason the Court rejects the Interstate [fol. 658] Commerce Commission plan is its failure to give due recognition to the preferred position of the Rio Grande First Trust 4s and the Junction 5s, as compared to the Reconstruction Finance Corporation notes. Had these mortgage trustees and institutional owners of the securities of this property shown the same interest in the debtor before this petition in reorganization was filed as they have since, this whole proceeding might well have been prevented with the resulting losses the securityholders must now make up their minds to take. This group, by means not disclosed, have assumed a position of importance and influence in the reorganization proceedings out of all proportion to the

amount of securities they represent, and the question might properly be asked: Are they in a position to represent fairly in this proceeding three different sets of bondholders whose interests are in many respects conflicting?

This FitzGibbon Plan must be rejected for the same reasons that the Court rejected the so-called Discussion Plan, (Opinion of Dec. 6, 1940), i. e., it is not within the framework of the Interstate Commerce Commission plan; fails to provide the new cash necessary to carry it out; fails to give equitable treatment to the Divisional Mortgages as determined by the Interstate Commerce Commission, greatly favoring the Western First Trust 4s, largely at the expense of the Rio Grande Consolidated 4s and 4½s; and is presented without any assurances of acceptance by the parties. [fol. 659]. Anticipating, perhaps, the objection that it fails to provide necessary cash to carry out the plan, it was later suggested as part of this plan that the necessary cash, to wit, $5,000,000.00 required to pay off outstanding Trustees' Certificates, and $1,000,000.00 for reorganization expenses, be supplied by sale of a new Class B common stock with sole voting power to the three eastern connecting roads, the Rock Island, Missouri Pacific and Burlington. However, before other railroads could purchase this stock, the Interstate Commerce Commission would have to grant its approval, and the proponents of the plan do not offer any assurance that binding commitments to purchase the stock or the approval of the Interstate Commerce Commission have been or can be obtained.

As an alternative it was stated that $3,000,000.00 is available from the cash balance in the hands of the Trustees and that the Reconstruction Finance Corporation purchase sufficient new income bonds for cash to finance the plan. The Trustees of the debtor state their income forecast for the coming year, taking into account expenditures authorized by the Court and on the assumption that the new locomotives authorized by order of February 10, 1941, are to be paid for to the extent of 75% by an equipment trust, shows an estimated cash balance on December 31, 1941, of $2,748,000.00. The Trustees and the Court, however, feel unless too strong objection is made by the interveners, that these new locomotives should be paid for in cash in full, with- [fol. 660] out at this time incurring additional indebtedness in the form of equipment trusts. This would require

$848,750.00, in addition to the down payment included in the forecast, and would deplete cash on hand by that amount, leaving a net of $2,900,000.00.

Moreover it is the Trustees' judgment they should have a working balance of not less than $1,250,000.00, for if for any reason the system should face declining traffic, and the Trustees still maintain their present policy towards work on the line and the acquisition of new equipment, this balance is the only shock-absorber against any shrinkage in gross. In addition it is wise to keep a substantial cash balance and assure, under any circumstances, the payment of Trustees' certificates at maturity, which occurs within the next five years, if the railroad is not reorganized within that time. For these reasons no part of the Trustees' cash balance is available for reorganization expenses.

The Court (Memorandum of Aug. 30, 1940) agreed in principle with the Insurance Group, holding that "the traffic density on that part of the main line between Dotsero and Salt Lake justifies preferential treatment for the liens secured thereby." In the distribution of securities suggested by the Court (Dec. 6, 1940) the Western First Trusts were given 29.14% of their claims in first mortgage bonds, and the Junctions the same percentage, at the expense of the Reconstruction Finance Corporation and other parties. [fol. 961] It is hoped that all parties will look at the matter from the Court's point of view and bear in mind the Court, with the Commission, is charged with the duty of developing a fair and equitable plan of reorganization. Warren v. Palmer, 310 U. S. 132 (subdivision (e), Sec. 77, Bankruptcy Act).

Considering the public's point of view and that of all creditors, this particular situation requires a consolidation of the Rio Grande and the Denver & Salt Lake, and provisions that will obviate the basic causes that in the past have brought financial disaster to this property, such as application of earnings to fixed charges not earned, with the resulting under-maintenance of the physical condition of the property and its equipment and inability to make net earnings. This is not hard, provided the management, like the Trustees, has the single purpose of the prosperity of this particular property in mind and does not permit its earnings and traffic to be used and diverted, as in the past, for the benefit of other properties.

The holders of Denver & Salt Lake Income bonds are so much better off in their present position than they would be under this FitzGibbon Plan, that it is very doubtful if they would agree to it. Their bonds are neither due nor in default as to the payment of principal and interest, and are to be paid 4% in 1941 out of actual earnings.

It is not the duty of the Court to prepare a plan of reorganization, yet, having carefully studied the Interstate Commerce Commission Plan, including the record before [fol. 662] the Commission, and with the benefit not only of the court proceedings, the briefs and numerous formal and informal discussions and conferences with interested parties and others whom I have consulted, I have concluded that my reasons for not approving the Interstate Commerce Commission Plan can best be indicated by presenting what, in my humble judgment, is a plan that does equity between all the parties, and is well within the requirements of Section 77. Thus the plan annexed hereto represents my views based upon the above experience and study, including the operation of this property during this proceeding and the previous equity reorganization, and it is my best informed, independent judgment.

This plan dated March 1, 1941, effectual as of January 1, 1941, is within the framework of the Interstate Commerce Commission Plan. It makes provision for all cash necessary for its consummation, gives equitable treatment to the Divisional Mortgages in the proportion determined by the Interstate Commerce Commission, which apparently considered divisional earnings and all pertinent facts, more particularly between the Rio Grande First Trust 4s and Rio Grande Consolidated 4s and 4½s. It does not dilute the security of either to provide funds for the retirement of the Salt Lake issues.

In regard to the Salt Lake issues, it calls for the guaranty of the interest on the Firsts and Incomes thereof up to 4% by the reorganized company. The principal of the Salt Lake's debts, including liens for equipment, is left undis- [fol. 663] turbed without assumption by the reorganized company, yet complete consolidation is provided for. The voluntary reduction of interest from 6% to 4% on the Salt Lake Income bonds does not disturb their [illegible]. Four per cent has already been formally declared payable on the

Salt Lake Income bonds for the current year. It neither strengthens nor weakens their existing security, and requires the refunding of non-consenting income bonds. Thus the interest on the Salt Lake Income bonds, which becomes fixed upon consolidation in accordance with the terms of the existing mortgages, is guaranteed up to 4% only by the reorganized company. This 4% interest guaranty merely amounts to a current payment for the use of the Denver & Salt Lake division which, together with the payments required by the assumption of the Tunnel contract, makes available to the new company the Denver gateway, and assures the continuance of the highly competitive bridge traffic and permits the economies of complete consolidation. The new company acquires the Salt Lake Western (the Cutoff) from the Reconstruction Finance Corporation by the payment of the original cost thereof in first mortgage bonds.

The stock of the Salt Lake Western has no bonds ahead of it, so is a first lien next to the rails. The plan provides that the Reconstruction Finance Corporation receive payment for the balance of its collateral loan advances—always a poor risk—in income 4½s, and in addition thereto it is [fol. 664] asked to purchase for new money $6,000,000.00 additional 4½% income bonds. The Reconstruction Finance Corporation is given the privilege of converting as a unit not less than $6,000,000.00 4½% Incomes into Class B common, with full voting power for resale, under certain limitations, to the three eastern connecting carriers.

Thus The Reconstruction Finance Corporation is given a means for liquidating the new money required from it, and in addition for the current collection of its more temporary advances. The total fixed charges, including interest on the Salt Lake to Pueblo division, will be no greater, as shown in ICC Plan. Total fixed charges on the Denver & Salt Lake division, including assumed interest will be greater, but are thought to be justified by the avoidance of any assumption of $11,234,000.00 of principal liabilities.

It is thought this plan meets the principal objection of creditors, especially the Insurance Group, that the security behind the Rio Grande mortgages was being thinned too much to make provision for cash payment of the Salt Lake bonds.

The Court is thoroughly convinced the amount of fixed interest must be kept within the limits of the Interstate

Commerce Commission Plan. This for reasons stated in the previous opinions of the Court, together with the present prospect of increased taxes and labor costs, lessening earnings, and future uncertainties. In the first analysis it [fol. 665] makes very little difference what type of security a creditor gets—whether it calls for payment of fixed or contingent interest or dividends. In no event can the same be paid except out of net income actually earned.

This plan, which, to identify, we will call the plan of March 1, 1941, effective as of January 1, 1941, is within the framework of the Interstate Commerce Commission Plan.

The Court waives its previous insistence that the amount of first lien bonds on the consolidated system be kept within the $29,403,143.00 called for by the ICC Plan, and provides for $41,120,142.00 first mortgage bonds with 3% fixed interest, with an additional 1% contingent, this 1% to be fully cumulative and payable before any interest is paid on the income bonds. At 3% the fixed interest thereon is only $74,000 more than 4% on $29,000,000.00, yet there will be no year when the full 4% will not be earned.

The Rio Grande Western First Trust 4s get 100% of their principal and 80.65% in first mortgage bonds on the full amount of their claim with interest to January 1, 1941.

The Rio Grande Junction bonds receive 101.24% of their principal and 79.14% of their total principal and interest in new first mortgage bonds. Likewise the Eastern Consolidateds receive more equitable treatment than under any [fol. 666] plan heretofore submitted. The increase in these first mortgage bonds reduces the amount of income bonds to $30,289,451.00.

The RFC receives $4,312,853.00 in first mortgage bonds, which equals the amount of their so-called Cutoff notes secured by the Denver and Salt Lake Western stock. This stock, it must be remembered, is really a first mortgage on the Cutoff, there being no bonds or other indebtedness ahead of it. On its old advances the RFC receives $8,540,931.00 in income bonds, and in return is asked to purchase $6,000,000.00 more of 4½% income bonds for cash, to be used to pay the Trustees' obligations and reorganization expenses. In exchange for this, not less than $6,000,000.00 of income bonds held by the RFC may be converted as a unit into the total issue of Class B common stock carrying the sole voting power. Any sum realized by the sale of this Class B stock

or any part thereof by the RFC shall be applied, first, to reimburse it for the par value of the bonds so converted, and, second, to payment at par for cancellation of other income bonds held by the RFC out of holdings received in this reorganization, and any remainder paid to the sinking fund provided for first mortgage bonds. The right to sell this Class B stock by the RFC shall be restricted so that no one purchaser can obtain more than 40% thereof, thus preventing any connecting carrier from controlling the reorganized company. This right of conversion to expire two years after the consummation of the reorganization.

[fol. 667] Consolidation shall only be effective if two-thirds of the holders of Salt Lake Income Bonds voluntarily accept this reduction of interest from 6% to 4%, any non-assenting bonds to be called for payment or refunding at the convenience of the reorganized company. Unless such consents are obtained, no actual consolidation shall be consummated, and the reorganized company would simply affirm the tunnel lease and the present trackage agreements.

It will be observed that the fixed interest charges on the forty-one odd million dollars of first mortgage bonds amount to $1,233,604.00, which is slightly in excess of the figure arrived at by the application of the so-called Eastman formula (Opinion of Dec. 6, 1940, p. 7); which is justified if we capitalize the $15,000,000.00 that has been put back into the system since the ICC Plan was promulgated, more than half of which has been spent on that part of the system covered by the two Western divisional mortgages.

The contingent interest, 1% on the first mortgage bonds, and $1,363,025.00 on the income bonds, and three small amounts (See Notes 19 and 20), amounts to $1,853,212.00, which will be reduced by saving in interest in event of conversion of income bonds by the Reconstruction Finance Corporation into Class B stock as provided for. The prior charges on income, consisting of the Capital Fund, equipment trusts, divisional mortgage bonds and fixed and contingent interest charges, and sinking fund of one-fourth of [fol. 668] 1% on the income bonds, amounting to a grand total of all charges of $4,569,644.00, was earned in 1940.

This plan meets the principal objections of the creditors, especially the Insurance Group. It fully recognizes their first lien position, and, further, avoids any thinning, as charged, of the Rio Grande Mortgage to provide for cash payment of the Salt Lake bonds. It gives the Reconstruc-

tion Finance Corporation a means of liquidating the new money required from it, and, in addition, its current obligations of its temporary advances which were a poor risk when made. Except as stated this capital structure is well within the limits of the Interstate Commerce Commission Plan, thought to be necessary for reasons heretofore stated by the Court. It ranks the creditor's claims according to their legal priorities, which is all that can be asked for, and whether the creditors get any return or not will depend directly upon proper management of the property, and not upon the particular type of security the respective creditors get.

I again emphasize the provision for the earmarking and setting aside of the $750,000.00 a year Capital Fund. This, as well as the provision for setting aside and earmarking in a special fund the annual depreciation charge (Opinion of Dec. 6, 1940), are the best guarantees that can be put into the plan to assure the proper upkeep and maintenance of the property, the lack of which has always characterized the management of this system when in the hands of its [fol. 669] owners, and eliminates any temptation of future management "to bleed the adequate upkeep of the property in order to pay interest or dividends—a temptation that past managements have been unable to resist."

The Court again emphasizes its views (page 29 Opinion of Dec. 6, 1940) in respect to modification of the ICC provisions for the Reorganization Committee, being strongly of the opinion that the property should be under the direct control of the Court until the reorganization ~~plan is~~ completed. Further, it is suggested, in view of the small amount of bonds of any one issue represented by the Insurance Group, that their representation on the committee be cut to one member, and that the Court or some other proper authority name a member to represent the public interests of the citizens of Colorado.

The Court is of the opinion that the future of this property will be better assured if it is maintained as an independent unit and the control be not sold to any connecting carrier. These carriers are more dependent upon the Rio Grande than it is upon them. Artificial traffic control through stock ownership is restrictive in nature and tends to limit the value of the public service which the new company can render, as well as weaken the value of its secur-

ities, for "Freight traffic gravitates to the fastest schedule as quickly as water seeks its own level."

Even with the above modifications of the Interstate Commerce Commission plan in favor of the main line underlying Divisional Mortgages at the expense of the Recon- [fol. 670] struction Finance Corporation, it may be argued that the plan as modified is still too favorable to the Reconstruction Finance Corporation. The Court does not concur in this view. The security held by the Reconstruction Finance Corporation, namely, the Denver Gateway, is absolutely essential if the property is to have a future.

Transcontinental traffic, for which competition is so keen with the railroads to the north and south, must be held and built up if this debtor is to secure and hold the minimum traffic necessary to even maintain operating expenses and build up future interest requirements and dividends. The Trustees have demonstrated this can be done.

The Reconstruction Finance Corporation is in the better position to protect itself under an independent operation, and consideration must be given to the fact that it is asked to supply the new money necessary to make any plan effective and their reasonable requirements must be met if they do put up the new funds.

My three opinions in this matter, it is thought, set forth the reasons moving the Court to disapprove the ICC Plan and send it back to the Commission for further hearings and consideration. The Court recognizes the Commission is well versed and peculiarly fitted to appraise the values of different interests and the soundness and fairness of any plan. If it does not agree with the views of this Court, any new plan they submit is most likely to receive our approval. [fol. 671] The rights of the parties have been so minutely explored and discussed that it is hoped there may be little difficulty in the parties reaching an agreement upon a plan that meets the views of the Commission and the Court which are now in the record.

J. Foster Symes, District Judge.

Denver, Colorado, March 6, 1941.

Filed Mar. 7, 1941. George A. H. Fraser, Clerk.

(Here follows 1 paster, side folios 672-673)

[fols. 672-673]

EXHIBIT "A"

The Denver and Rio Grande Western Railroad Company Reorganization Plan of March 1, 1941

Distribution of New Securities as of January 1, 1941

Present Liabilities	Principal Amount[1]	Accrued Interest	Total[1]	Cash[2]	Undisturbed or Extended	50 Yr. 1st Mtg. Bonds (3% Fixed 1% Contingent Fully cumulative & to be paid before any interest on Income Bonds)[3] (Note A)	Percentages of Settlement of Claims of Divisional Mortgages: Principal (Note B)	Principal and Interest	75 Yr. Income 4½% Bonds Series A Non-cumulative Interest must be paid if earned up to 75% of net income to nearest ¼%, otherwise becomes cumulative	Percent of Principal & Interest	Preferred Stock 5%	Percent of Principal & Interest	Class A Common (No Par at $100 Beneficial interests to be distributed. Exchangeable for stock after 5 years and upon expiration of voting trust (Note 4)
Trustees' Certificates	$5,000,000		$5,000,000	(5)					$5,000,000[6]				
Reorganization Expense	1,000,000		1,000,000	(5)					1,000,000[6]				
Equipment Trusts[7]	5,789,000		5,789,000		$5,789,000[7]								
Rio Grande Western 1st Trust 4's	15,190,000	$3,645,600	18,835,600			$15,190,000	100.00%	80.65%	3,645,600	19.35%			
Rio Grande Western 1st Cons. 4's	15,080,000	3,770,000	18,850,000								$18,850,000	100.00%	
Rio Grande Junction Bonds, 5%	2,000,000	558,333	2,558,333			2,024,769	101.24	79.14	533,564	20.86			
D&RG 1st Cons. 4's and 4½'s	40,507,000	10,739,235	51,246,235			14,465,265	35.71	28.23	8,238,252	16.08	10,665,570	20.81	$17,877,148[8]
D&RGW Ref. and Imp. 5's and 6's	14,000,000	4,500,000	18,500,000			5,127,255	36.62	27.71	2,920,004	15.78	3,780,370[8]	20.44	6,672,371[8]
D&RGW Gen. Mortgage 5's	29,808,000	10,681,200[8]	40,489,200										13,355,381[8]
RFC Notes	10,691,850	2,161,934	12,853,784			4,312,853[9]	40.34	33.55	8,540,931[5]	66.45			
D&SL 1st Mortgage 4's	1,500,000		1,500,000		(1,500,000)[11]								
D&SL Income 6's[10]	9,734,000		9,734,000		(9,734,000)[11]								
Chase National Bank Loan[12]	1,500,000	478,458	1,978,458		(1,978,458)[13]	(14)			(14)		(14)		(14)
Railroad Credit Corp. Loan[15]	206,291		206,291[15]	$206,291[16]									
Denver and Salt Lake Minority Stock	4,111 shares		411,100						411,100				
Total			$188,952,001	$206,291[16]	$5,789,000	$41,120,142			$30,289,451		$33,295,940		$37,904,900[8]
Prior charges on income:													
Capital Fund (to take precedence over fixed interest)					$750,000(a)								
Equipment Trust Interest					138,076								
					$888,076								
Fixed and assumed interest:													
First Mortgage Bonds						$1,300,116[18]							
D&SL Divisionals. Interest but not principal assumed						449,360[17](b)							
						$1,749,476(c)							
Prior contingent interest:													
First Mortgage Bonds						433,372[19]							
						$2,182,848(d)							
Second contingent interest:													
Income 4½'s (Interest)									$1,419,840[20]				
Income 4½'s Sinking Fund									78,800[21]				
									$1,498,720				
Cumulative Capital Fund Fixed and Contingent Interest and Sinking Fund i. e., $888,076 + $1,749,476 + $433,372 + $1,419,840 + $78,880									$4,569,644(e)				

(a) Maximum.
(b) Earned and paid on D&SL First and Income Bonds in
(c) Earned 218 times in 1940.
(d) Earned 1¾ times in 1940.
(e) Earned in 1940.

Note A. Exactly the same proportionate allocation to divisions as provided in ICC Plan, after making provision for RFC "Cutoff" notes secured by Denver and Salt Lake Western stock.

B. Percentages of settlement of claims differ slightly from those shown on ICC Plan, due to change in effective date of Plan and various rates of interest accrual on divisional mortgage bonds.

1. Excluding pledged bonds.
2. Treasury cash not to be depleted (other than as provided in Note 16).
3. Absolute prior lien on existing D&RGW System (including Cutoff built by D&SLW) not shared by holders of D&SL liens.
4. Held in voting control pending forfeiture of conversion rights of RFC and cancellation of Class B Common, and for such further period as Court may fix to assure satisfactory management for stabilizing period; during which Voting Trustees upon prior approval of 2/3 of holders of beneficial interests with same limitation as to sale of over 40% to any one purchaser. (See Note 6).
5. To be obtained from proceeds of sale of 4½% Income Bonds to RFC.
6. RFC to purchase $6,000,000 of 4½% Income Bonds for cash, in addition to receiving $8,540,931 on old note advances. Total $14,540,931. Not less than $6,000,000, par value, of these bonds held by RFC to be convertible as a unit into Common Stock carrying sole voting power. Any sum realized by sale of Class B Stock or any part thereof to be applied first to reimburse the RFC for par value of such bonds so converted, and second to payment at par for cancellation of other

independently as it now does, shows continuous deficits for the stock since 1931, except in 1935 after fixed charges and [fol. 683] 6 percent interest on the income bonds.

The Commission should not in this case accord sole consideration to the severance study as a basis for fixing the value of the cut-off to the system. The statements of the Commission in the reorganization of the *Chicago & N. W. Ry. Co.*, in 236 I. C. C. 575, 239 I. C. C. 615, and of the United States District Court in *In Re Chicago and North Western Ry. Co.*, 35 Fed. Supp. 230, 240, referred to by the group as authority for relying solely upon the severance study for evaluating a bridge line, are not applicable where, as here, the bridge line affords by far the most direct access to one of the principal Eastern gateways of the property. Retention of control of the line is admittedly of prime importance to the debtor, and the past earnings of the line may be expected to be exceeded in the future.

The importance of the cut-off route to the system, and of access to the Denver gateway, are acknowledged by the parties, especially as affecting the ability of the system to compete with other trans-continental routes. The evidence of the increase of traffic interchanged with the Chicago, Burlington & Quincy Railroad at Denver as compared with the increase of interchange with the Missouri Pacific Railroad at Pueblo, Colo., since 1937, refutes the averment that the traffic position of the cut-off route has been stabilized. Continued development of traffic over the cut-off should serve to increase the importance and value of the cut-off, even on a severance basis.

The final position of the insurance group committee, in the light of the whole record, is seen in its acceptance of the court's provision for the Finance Corporation's claim. The group goes so far as to contend that this judicial deter- [fol. 684] mination is now the law of the case and as such controls all further proceedings before the Commission. The final position of the Finance Corporation consists substantially in the rejection of the court plan, a plea for recognition of the importance of the cut-off lines, and a request that the treatment of its notes shall be no less favorable than that accorded to the western divisional mortgages.

The court plan provided for the issue of new bonds in settlement of the Finance Corporation claim (as of Janu-

Percent of Principal & Interest	Preferred Stock 5%	Percent of Principal & Interest	Class A Common (No Par at $100) Beneficial interests to be distributed. Exchangeable for stock after 5 years and upon expiration of voting trust. (Note 4)	Percent of Principal & Interest	Class B Common (See Note 22)
19.35%					
	$18,850,000	100.00%			Proportion of Common A Issued
20.86					
16.08	10,665,570	20.81	$17,877,148[a]	34.88%	47.2%
15.78	3,780,370	20.44	6,672,371[4]	36.07	17.6
			13,355,381[4]	32.99	35.2
66.45					Of interest only if Common A finally acquires voting power
	(14)		(14)		
	$33,295,940		$37,904,900[4]		

) Maximum.
) Earned and paid on D&SL First and Income Bonds in 1940.
) Earned 218 times in 1940.
) Earned 1¾ times in 1940.
) Earned in 1940.

nds.

ient for stabilizing period, during which Voting Trustees would have right of sale

se bonds held by RFC to be convertible as a unit into total issue of Class B Com- and second to payment at par for cancellation of other Income Bonds then held that no one purchaser can obtain more than 40% thereof. Conversion privilege

mprovements.

holders of Income Bonds voluntarily consent (1) to a reduction of fixed interest of D&SL Divisional Bonds (i. e., either 1st 4's or Incomes except in refunding): ivisional mortgages undisturbed as to existing security and covering D&SL prop-

ary 1, 1941), on the basis of $4,312,853 in first-mortgage 50-year bonds and $8,540,931 in income-mortgage 75-year bonds. It is believed that the amount of first-mortgage bonds thus assigned was intended to represent the loan made for construction of the cut-off. According to the analysis made by counsel for the insurance group of the value of the Salt Lake stock and other pledged collateral, this treatment of the Finance Corporation was liberal; according to the counsel for the Finance Corporation it does not give proper recognition to the pledged collateral, especially to the element of control of the cut-off. The court's treatment of the Finance Corporation's claim clearly was influenced by the concurrent proposal that the Finance Corporation would take $6,000,000 of new income bonds at par, advancing the cash required to pay the $5,000,000 of trustees' certificates outstanding and $1,000,000 of reorganization expenses. No provision apparently was made for paying or refunding the Salt Lake income bonds, the owners of which do not assent to the proposed modification of interest terms. The amount of such nonassenting bonds might, as a maximum, be approximately $3,309,000.

If the matter of new financing be separately considered, [fol. 685] to be carried out through a direct loan to the new company, secured by an appropriate amount of new securities, or purchase of such securities, then the treatment of the Finance Corporation's existing notes might logically be based on the securities pledged, with appropriate provisions effective if consolidation with the Salt Lake is not effected through the means provided.

The securities pledged with the Finance Corporation which are of classes that are also outstanding in the hands of the public comprise $783,000 of D. & R. G. consolidated 4-percent bonds, $10,000 of R. G. Western first-trust 4-percent bonds, $1,395,000 of R. G. Western consolidated 4-percent bonds, $4,385,000 of refunding and improvement mortgage 5-percent bonds, and $1,266,000 of Salt Lake income bonds. Under the plan recommended herein, the holders of these securities would be entitled to receive the following securities of the new company: $2,305,300 of first-mortgage bonds, $1,386,650 of income bonds, $2,079,850, par value, of preferred stock, and 20,672 shares of common stock.

The so-called outside securities under pledge are the $1,777,000 of Rio Grande Southern first-mortgage 4-percent

Equipment (First Division)		188,076	
		$888,076	
Fixed and assumed interest:			
First Mortgage Bonds		$1,300,116[18]	
D&SL Divisionals. Interest but not principal assumed		449,360[17](b)	
		$1,749,476(c)	
Prior contingent interest:			
First Mortgage Bonds		433,372[19]	
		$2,182,848(d)	
Second contingent interest:			
Income 4½'s (Interest)			$1,419,840[20]
Income 4½'s Sinking Fund			78,800[21]
			$1,498,720
Cumulative Capital Fund Fixed and Contingent Interest and Sinking Fund i. e., $888,076 + $1,749,476 + $433,372 + $1,419,840 + $78,880			$4,369,644(e)

(b) Earned 218 times in 1940.
(d) Earned 1¾ times in 1940.
(e) Earned in 1940.

Note A. Exactly the same proportionate allocation to divisions as provided in ICC Plan, after making provision for RFC "Cutoff" notes secured by Denver and Salt Lake Western stock.

B. Percentages of settlement of claims differ slightly from those shown on ICC Plan, due to change in effective date of Plan and various rates of interest accrual on divisional mortgage bonds.

1. Excluding pledged bonds.
2. Treasury cash not to be depleted (other than as provided in Note 16).
3. Absolute prior lien on existing D&RGW System (including Cutoff built by D&SLW) not shared by holders of D&SL liens.
4. Held in voting control pending forfeiture of conversion rights of RFC and cancellation of Class B Common, and for such further period as Court may fix to assure satisfactory management for stabilizing period, during which Voting Trustees upon prior approval of 2/3 of holders of beneficial interests with same limitation as to sale of over 40% to any one purchaser. (See Note 6).
5. To be obtained from proceeds of sale of 4½% Income Bonds to RFC.
6. RFC to purchase $6,000,000 of 4½% Income Bonds for cash, in addition to receiving $8,540,931 on old note advances. Total $14,540,931. Not less than $6,000,000, par value, of these bonds held by RFC to be convertible as a unit into to mon Stock carrying sole voting power. Any sum realized by sale of Class B Stock or any part thereof to be applied first, to reimburse the RFC for par value of such bonds so converted; and second to payment at par for cancellation of other by RFC out of holdings received in reorganization, and any remainder paid into the sinking fund provided for 1st Mortgage Bonds. Right of sale of this stock by RFC to be restricted so that no one purchaser can obtain more than 40% there to expire 2 years after consummation of reorganization.
7. Including Equipment Trust, Series G, $1,260,000, issued February 1, 1941.
8. Excluding $7,452,000 of contingent interest accrued in five year period ended February 1, 1929, and excluding 50% payment which was made on coupon due February 1, 1934.
9. RFC "Cutoff" notes secured by D&SLW stock. D&SLW has no indebtedness and stock represents unencumbered ownership of Cutoff mileage, of increased value account subsequent improvements.
10. Excluding $1,266,000 principal amount, pledged with RFC, to be cancelled.
11. Under terms of D&SL Income Bonds they become a fixed obligation as to interest at 6% as and when any consolidation is effected. Consolidation shall only be effected if 66-2/3% of holders of Income Bonds voluntarily consent (1) to a r from 6% to 4% and (2) to the call for payment or for refunding (at the convenience of the reorganized company) of Income Bonds not consenting. No further issuance or negotiation of D&SL Divisional Bonds (i. e., either 1st 4's or Inco Not to be assumed as to principal by reorganized company, but interest at 4% on 1st 4's and on the Incomes to be assumed for present life of bonds. Status of 1st 4's and Incomes: divisional mortgages undisturbed as to existing security a erties, full right reserved to refund without assumption. Tunnel contract to be assumed by reorganized company. Unless such consents are obtained, no actual consolidation would be in effect; in that event the balance of the Plan would no no provision would be necessary for minority holders of Salt Lake stock. The reorganized company would then own free in its treasury the Salt Lake stock now pledged to RFC; there would then be no assumption of interest on the Salt Lake the trackage agreement would remain in effect.
12. Interest on Chase Bank note computed in accordance with claim of Bank at 6% from date petition filed under Sec. 77, as provided by laws of State of New York. Subject to final determination.
13. To be a 4% note secured by pledge of following for claim of $8,001,000 on pledged R. and L. 5's; New 1st's, $2,217,077; New Income 4½'s, $1,262,558; New 5% Preferred, $1,635,401; New Common A, $2,885,961.
14. Collateral to be pledged, as listed in Note 13, but not included in totals shown above as outstanding. Interest payable on such collateral is shown in summary of fixed and contingent interest above. Maximum interest payable annually (ex tions) limited to 4% on $1,978,458, or $79,138.32, with excess payments received as interest or dividends from collateral applied to reduction of principal of note.
15. In computing amount due Railroad Credit Corporation, the balance due D&RGW under Marshalling and Distributing Plan has been deducted.
16. To be paid from cash in Treasury upon consummation of Plan, and collateral due in reorganization cancelled.
17. Consists of Divisional Mortgage Bonds (unassumed as to principal): D&SL 1st 4's, $60,000; D&SL Incomes (100% exchanged or balance refunded), $389,360; Total, $449,360.
18. Consists of $1,233,604 fixed interest on $41,120,142 First Mtg. Bonds to be outstanding.
66,512 fixed interest on 2,217,077 First Mtg. Bonds to be pledged as collateral for Chase Note.

$1,300,116	$43,337,219

19. Consists of $ 411,201; 1% contingent interest on $41,120,142, First Mtg. Bonds to be outstanding.
12,602; balance of interest at 4% on Chase Bank note, the payment of which is contingent upon interest payments on new Firsts to be pledged as collateral for such note.
9,569; to be applied to reduction of principal of Chase Bank note when 1% contingent interest is paid on new Firsts to be pledged.

$ 433,372

20. Consists of a maximum of $1,363,025 interest on $30,289,451 Income 4½'s to be outstanding.
56,815 to be applied to reduction of principal of Chase Bank note if maximum interest of 4½% is paid on Income Mortgage Bonds.

$1,419,840—Will be affected by: 1. Interest limitation required by Chase Bank note (difference applicable to principal). 2. Interest ceasing on any conversion by RFC to Class B Common.

21. ¼ of 1 per cent of the following outstanding and pledged Series A Income Bonds: $30,289,451 outstanding Series A Income Bonds.
1,262,558 Series A Income Bonds pledged under Chase Bank note (applicable to principal).

$31,552,099

22. Class B Common (No Par Value): None to be issued unless RFC exercises its right of conversion, then 100,000 shares to be issued.

bonds, 500 shares of Goshen Valley stock, 73,710 shares of Denver-Colorado Springs-Pueblo Motor Way stock, and 1,564 shares of Rio Grande Motor Way stock. The only one of these items for which any realizeable value is claimed by the Finance Corporation is the Denver-Colorado Springs-Pueblo Motor Way stock, which is said to have a cash value in excess of $200,000. In respect of these outside securities it would be appropriate for the Finance Corporation to receive a note in the amount of $250,000 secured by the securities mentioned.

[fol. 686] The original cost of the Dotsero cut-off is represented approximately by the 36,310 shares of capital stock, taken at $100 a share. The Salt Lake Western has no funded debt. Viewed as a construction project, the financing in such a case might be assumed to be by means of stock and bonds in equal proportions. For the Salt Lake Western stock held by the Finance Corporation, comprising all of such stock outstanding, it would be reasonable to assign $1,815,500 of new first-mortgage bonds, 9,077 shares of new preferred stock, and 9,078 shares of new common stock. While the earnings of the Salt Lake Western are not available separately, the foregoing amount of new bonds assigned is not excessive in relation to the rental under the lease.

As to the stock of the Salt Lake held by the Finance Corporation, the record justifies the conclusion, and the Commission should so find, that the future of the reorganized system will depend upon maintaining control of the Denver gateway through the cut-off route, and that control of this route by the Finance Corporation through its stockholdings of the Salt Lake and the secondary debtor constitutes an asset which should be recognized in the reorganization. But, disregarding this asset in the present analysis, and on the showing as to the value of the cut-off to the system solely from an earning standpoint, it would seem improper to recognize the Salt Lake stock through an allocation of new bonds. The circumstances, however, clearly justify assigning on this basis shares of new common stock of the reorganized company in an amount equal to the shares of Salt Lake stock held by the Finance Corporation.

On the basis of the foregoing study regarding the collateral pledged with the Finance Corporation the total new securities which would be issuable are $4,120,800 of new

first-mortgage bonds; $1,386,650 of new income bonds; [fol. 687] 29,876 shares of new preferred stock; 75,639 shares of new common stock, and a promissory note for $250,000.

It is clear that the foregoing allotment of securities does not adequately reflect the value of control of the cut-off held by the Finance Corporation through the pledge with it of practically all the stock of the properties. The above-stated securities may represent those which it is entitled to receive and hold regardless of the element of control. But the strategic position of the cut-off, its access to the principal Eastern gateway, and the situation as one leg of the wye which constitutes the system, justify the conclusion that the allocations shown in the study should be modified to give the Finance Corporation substantially better treatment. It is recommended that the claim be treated as well as the R. G. Western first-trust bonds or the Junction bonds. As hereinafter indicated these bonds, under the recommended plan, will receive new first-mortgage bonds in respect of 57 percent of the claim and new income bonds in respect of 43 percent of the claim. Accordingly, it is recommended that $7,570,431 of new first-mortgage bonds and $5,711,027 of new income-mortgage bonds be allocated to the Finance Corporation's claim. The recommended treatment of the claim in the event that the consolidation with the Salt Lake is not effected, is indicated below.

Denver and Salt Lake income bonds

Under the terms of the Salt Lake income mortgage, interest becomes fixed at 6 percent if consolidation with another road is effected. During the 10-year period 1931-40 the earnings of the Salt Lake available for interest averaged 4.34 percent per annum on the amount of income bonds outstanding and the average payment was 4.2 percent. [fol. 688] From 1928 to 1931, and in 1935, 6 percent was paid. The available income during the 10-year period averaged $478,000. This sum approximates the annual income indicated by the severance study, hereinbefore mentioned, as representing the contributive value of the cut-off to the system. In line with the evidence and the conclusion stated above with respect to the value of the cut-off to the system, the plan should provide, in connection with the consolidation, for modification of the interest terms of

$33,295,940	$37,904,909[1]

) Maximum.
) Earned and paid on D&SL First and Income Bonds in 1940.
) Earned 218 times in 1940.
) Earned 1¾ times in 1940.
) Earned in 1940.

nds.

ient for stabilizing period, during which Voting Trustees would have right of sale

se bonds held by RFC to be convertible as a unit into total issue of Class B Com-
, and second to payment at par for cancellation of other Income Bonds then held
that no one purchaser can obtain more than 40% thereof. Conversion privilege

mprovements.

f holders of Income Bonds voluntarily consent (1) to a reduction of fixed interest
of D&SL Divisional Bonds (i. e., either 1st 4's or Incomes except in refunding).
ivisional mortgages undisturbed as to existing security and covering D&SL prop-
in effect; in that event the balance of the Plan would not be affected except that
would then be no assumption of interest on the Salt Lake issues. In either event,

letermination.
New Common A, $2,885,961.
nterest above. Maximum interest payable annually (except in case of accumula-

e.

on by RFC to Class B Common.

the trustees, their counsel, and technical adviser. It would [fol. 691] appear that the Commission's estimate of $1,000,000 for total reorganization expenses no longer applies, and that such of these costs as now remain may possibly be defrayed by the use of the debtor's cash without impairing working capital.

For the new money required in the reorganization, other than for reorganization expenses, the plan should provide for a 12-year loan either by the Finance Corporation or through private channels in the amount of $5,000,000 for the payment of trustees' certificates outstanding, and in the event that consolidation of the Salt Lake is effected for such additional amount as may be necessary in connection with the payment, purchase, or refunding of the Salt Lake income bonds the holders of which do not assent to the proposal regarding these bonds. As collateral security for this loan, there should be issued by the new company, for pledge with the lender, first-mortgage bonds in an amount equal to 125 percent of the amount of the loan, or such other amount as shall be required by the lender and approved by the Commission. As an alternative to such a loan, the plan should provide that not exceeding $10,000,000 of new first-mortgage bonds may be issuable for sale to provide the new money required, as may be determined by the reorganization committee and approved by the court and the Commission.

Earnings; equity

In its report 233 I. C. C. 515, *supra*, at pages 551-2, the Commission discussed the earnings record of the carriers, and showed that the lowest system income available for interest in the last decade was in the 3-year period 1936-38. After adjustment for extraordinary expenditures for deferred maintenance, the average annual income available was stated at about $2,893,255. The total of the fixed-interest charges approved and the maximum annual pay-[fol. 692] ment to the capital fund was approximately $2,098,536, which would be covered 1.38 times by the foregoing amount of adjusted income.' The Commission there said

> In giving this consideration to the low earnings of recent years our position is not that the system lines will never regain their former earning power, or ex-

[fol. 674] INTERSTATE COMMERCE COMMISSION

Washington

Finance Docket No. 11902

Denver & Rio Grande Western Railroad Company
Reorganization

SUMMARY OF PROPOSED REPORT

This report contains the examiner's recommendations for a revision of the modified plan of reorganization of The Denver and Rio Grande Western Railroad Company, debtor, and The Denver and Salt Lake Western Railroad Company, secondary debtor, approved by the Commission on April 2, 1940, 239 I. C. C. 583. The evidential basis for the report includes the record made in the court proceedings following the certification of the modified plan to the court, and the further hearing held by the Commission on May 20, 1941.

Under the recommended plan, effective date January 1, 1942, the capitalization of the new company, on the basis of a consolidation of all the affiliated companies, including The Denver and Salt Lake Railway Company, would be as shown in appendix A of the report, and is summarized as follows:

Equipment obligations, undisturbed	$8,254,825
Chase Nat. Bank note, extended	2,068,458
R.R. Credit Corp. note, extended	268,953
Loan for new money, approximately	6,000,000
New first-mortgage bonds	34,579,366
New income bonds	34,925,295
D. & Salt Lake first-mtge. bonds	1,500,000
D. & Salt Lake income bonds, modified	9,734,000
Total debt	97,330,897
New preferred stock	29,013,585
New no-par common stock, taken at $100 a share	42,840,570
Total	169,185,052

ceed it, but rather that with the present conditions in the railroad field and in the public interest, a conservative policy should be followed * * *.

The evidence adduced at the further hearing shows that the improvement program has been substantially completed. From the appointment of the debtor's trustees on November 1, 1935, to March 31, 1941, a total of $22,916,051 was expended on the debtor's property, of which $17,504,246 was chargeable to capital account. The ratio of maintenance to total revenues had been 35.12 in 1935, 41.09 in 1936, 46.83 in 1937, and 39.09 in 1938. The debtor believes that the improvements already made, together with the coming acquisition of new Diesel switch engines and road engines costing $4,000,000, will produce a large and permanent reduction in operating costs. The results of operation in 1940 are considered by the insurance group committee to be fairly representative as to economy of operation as well as to gross revenue, based on five years of the trusteeship. The income of the Denver available for interest in 1940 was shown as $2,800,514* and the Salt Lake's available income as $509,771, a total of $3,310,285. Applying the unit costs of operation in 1940, the available income of the combined roads would have been $3,288,591 [fol. 693] in 1939, $2,970,135 in 1938, $3,774,334 in 1937, and $3,890,570 in 1936. The average for the five years is $3,446,765. These figures reflect operating charges of approximately $1,000,000 a year in connection with improvements. The forecast for 1941 shows an available income of $3,513,590 for the combined roads.

These figures indicate an improvement in the earning power of the system but do not justify a reconsideration of the Commission's findings regarding the equity of the Denver's stockholders (233 I. C. C. 515, at page 580) or of the holders of unsecured claims (239 I. C. C. 583, at page 594). The Commission pointed out that the annual interest charges on the debt of the Denver as of June 30, 1938, amounted to $5,919,227 and the charges on the debt of the system amounted to $6,563,267. Between June 30, 1938, and January 1, 1942, the increase in debt, due to interest accruals and new equipment obligations, will exceed

*Adjusted from the amount $2,647,086 shown in the 1940 annual report of the Denver's trustees to the stockholders.

[fol. 675] Based on this capital structure the annual charges would be substantially as follows:

	Fixed	Prior Contingent	Contingent	Preferred Dividends
Equipment obligations	$195,000			
Chase Bank note	49,835	$16,612	$16,150	
R.C.C. note	2,690			
Loan for new money, approx.	240,000			
New first mtge. bonds	1,037,381	345,794		
D. & S. L. first mtge. bonds	60,000			
D. & S. L. income bonds	389,360	194,680		
New income bonds			1,571,638	
Preferred stock				$1,450,679
Totals	1,974,226	557,086	1,587,788	1,450,679
Capital fund, maximum payment			750,000	
Sinking fund for first mtge. bonds			172,897	
Sinking fund for income mtge. bonds			87,313	

Under this plan the Denver & Salt Lake would be consolidated with the debtor only in the event the holders of at least 66⅔ per cent of the Denver & Salt Lake income bonds voluntarily accept an extension of the maturity date of the bonds to that of the first-mortgage bonds issued by the new company, and to a modification of interest on the Denver & Salt Lake income bonds to provide for 4 percent fixed interest and 2 percent contingent interest.

The proposed allocation of new securities to each class of claims is shown on appendix A. The holders of bonds of the classes shown below would receive for each $1,000 bond and all unpaid interest thereon, as of the effective date of the plan, the following amounts of new securities:

Rio Grande Western Railway Company first-trust bonds, $728.77 of new first-mortgage bonds and $551.23 of new in-
[fol. 676] come bonds; Rio Grande Western Railway Company consolidated mortgage bonds, $322.50 of new income bonds and $967.50, par value, of new preferred stock; Junction first-mortgage bonds, $757.53 of new first-mortgage bonds and $571.54 of new income bonds; Denver & Rio Grande Railroad Company consolidated mortgage 4-percent bonds, $260.00 of new first-mortgage bonds, $260.00 of new income bonds, $260.00, par value, of new preferred stock, and 5.2 shares of new common stock; Denver & Rio Grande Railroad Company consolidated mortgage 4½ percent bonds, $267.50 of new first mortgage bonds, $267.50 of new income bonds, $267.50, par value, of new preferred stock,

and 5.35 shares of new common stock; the debtor's refunding and improvement 5-percent bonds, $272.50 of new first mortgage bonds, $272.50 of new income bonds, $272.50, par value, of new preferred stock, and 5.45 shares of new common stock; the debtor's refunding and improvement 6-percent bonds, $287.00 of new first-mortgage bonds, $287.00 of new income bonds, $287.00, par value, of new preferred stock, and 5.74 shares of new common stock; the debtor's general mortgage bonds, 4.69 shares of new common stock.

The Reconstruction Finance Corporation would be entitled to receive, in full settlement of its notes, new first-mortgage bonds equal to 57 percent of the claim and new income bonds equal to 43 percent.

(Here follows topical index to report which is not reproduced herein.)

[fol. 677] INTERSTATE COMMERCE COMMISSION

Finance Docket No. 11002

Denver & Rio Grande Western Railroad Company Reorganization

Submitted — *Decided*

Upon record previously made in the proceedings before the court and the Commission, and upon further hearing before the Commission, a revised plan of reorganization for the Denver & Rio Grande Western Railroad Company, pursuant to section 77 of the Bankruptcy Act, as amended, recommended.[1]

Appearances as in prior reports, and also *Montgomery Dorsey*, *William J. Kane*, and *Emmet McCaffery*.

REPORT PROPOSED BY M. S. JAMESON, EXAMINER

By its report and order of April 2, 1940, in this proceeding, 239 I. C. C. 583, the Commission approved a modi-

[1] Previous reports: 212 I. C. C. 105 and 709; 217 I. C. C. 101; 224 I. C. C. 574; 233 I. C. C. 515; 242 I. C. C. 629 and 721.

fied plan of reorganization of The Denver and Rio Grande Western Railroad Company, debtor, and The Denver and Salt Lake Western Railroad Company, secondary debtor. The modified plan was duly certified to the District Court of the United States for the District of Colorado, where proceedings for reorganization of the above-named companies are pending. Pursuant to an order of the court entered May 6, 1940, objections to the plan were filed with the court by the debtor, the insurance group committee, the Finance Corporation, and other parties, and the case [fol. 678] came on for hearing on July 29, 1940. Following an informal conference with the parties after the close of the hearing, the judge issued an interim memorandum, dated August 30, 1940, in which he expressed his views regarding the main features of the plan. Further conferences were held and a new plan, proposed by the insurance group committee and known as the discussion plan, was considered. On December 6, 1940, the judge filed an opinion in which he criticized the discussion plan and the Commission plan, and suggested a different plan.

The abbreviated titles of companies used in the Commission's reports will be followed herein.

The adoption of the discussion plan was urged in a petition filed with the court by the Central Hanover Bank & Trust Company, trustee of the R. G. Western first-trust mortgage. On January 6-8, 1941, the court heard the parties in oral argument, after which several conferences were held. A plan referred to as the FitzGibbon plan was presented at these conferences. On March 7, 1941, the court entered an order overruling a motion to dismiss the proceedings, disapproving the Commission plan, and referring the proceedings back to the Commission with an opinion dated March 6, 1941. In this opinion the judge indicated his objections to the various plans offered, including the Commission plan and a plan proposed by the Finance Corporation, and described a plan which he recommends. This plan will be referred to hereinafter as the court plan. The record made in the court proceedings was transmitted to the Commission.

Upon petition by the insurance group committee an order was entered reopening the proceeding and assigning it for further hearing on May 20, 1941, for the purpose of receiving evidence to bring the record of the debtor's opera- [fol. 679] tions down to date, and such other evidence and

suggestions as would assist in a reconsideration of the approved plan. Briefs were filed. The briefs were devoted largely to criticisms of, and suggested changes in, the court plan.

The court plan differs in essential respects from the Commission's modified plan although intended to be within the framework of the latter. The court agrees with the Commission regarding a consolidation of the lines, stating in its opinion that, "Considering the public's point of view and that of all creditors, this particular situation requires a consolidation of the Rio Grande and the Denver & Salt Lake." But under the court plan the consolidation would be effected only in the event the holders of at least 66⅔ percent of the Salt Lake income bonds voluntarily accept a modification of the interest provisions of these bonds so that they would bear fixed interest at 4 percent and contingent interest at 2 percent per annum. The effective date of the court plan is January 1, 1941, while that of the Commission plan is June 30, 1938, involving an increase of approximately $15,000,000 in accrued interest on funded debt, together with new equipment obligations. The amount of new first-mortgage bonds was increased from $29,403,144 of 4-percent bonds in the Commission's plan to $41,120,142 of bonds bearing 3-percent fixed interest and 1-percent prior-contingent interest. The $1,278,539 of annual fixed charges in the Commission plan was increased to $1,887,552 in the court plan, principally by the inclusion of the Salt Lake bonds. The distribution of securities allocated to others than the Finance Corporation was generally on the basis of the Commission plan, but, due to the increase in first-mortgage bonds and the different treatment of the claims of the Finance Corporation, the treatment of the Denver's bonds [fol. 680] was much more favorable than in the Commission plan. The court plan provides that the payment to the capital fund, a maximum of $750,000 per annum, be made prior to the payment of fixed interest, rather than immediately following. For the new money required in the reorganization the Finance Corporation would purchase $6,000,000 of income bonds which would be convertible as a unit into class-B common stock, carrying sole voting power. The right of sale of this stock by the Finance Corporation, for its reimbursement, would be restricted so that no one purchaser could obtain more than 40 percent thereof. These matters, the suggestions made by the

various parties, and the evidence presented since the record before the Commission was previously closed (December 1, 1939), are discussed below.

In its report, 239 I. C. C. 583, *supra*, the Commission reviewed the development of the cut-off route, the close affiliation between the component roads, the Moffat tunnel interest, and the question of public interest, and reaffirmed its previous finding that the properties should be consolidated in connection with this reorganization. The Commission also pointed out the status of the Finance Corporation as pledgee of the stocks of the Salt Lake and Salt Lake Western, and stated its reasons for the treatment accorded the claims of the Finance Corporation in the plan. It appears that the court rejected the Commission's plan because, through this treatment of the Finance Corporation and the relative treatment of the debtor's bondholders, particularly those owning the bonds of the R. G. Western and the Junction, the price to be paid for consolidation was too high, and the plan was deemed inequitable. It is apparent that the Commission plan must be disregarded as being impossible of approval or acceptance and that a new plan [fol. 681] should be prepared on the general basis of the court's plan for consolidation with the Salt Lake.

Provisions for consolidation

Both classes of Salt Lake bonds should retain their present lien whether or not the consolidation is effected; in the event of consolidation the bonds of the new company should be secured by the combined properties of the debtor, the secondary debtor, the Junction, and the Goshen Valley; otherwise by those of the debtor, the Junction, and the Goshen Valley. The merger or consolidation of these properties, together with the Salt Lake, should be undertaken, and if the proposal is accepted by the holders of the required percent of income bonds, as hereinafter described, should be effected in a manner to be determined by the reorganization committee, subject to approval by the Commission and the court, and under a fair and equitable arrangement to protect the interests of the railroad employees affected, as required by law. The new plan should indicate the treatment of the various claims on the basis of such a consolidation, and also on the basis of continued separate operation of the Salt Lake, in which case the Salt Lake

bonds and the stock outstanding in the hands of the public would remain undisturbed. In the event that the consolidation with the Salt Lake is effected, the tunnel contract would be assumed by the new company.

Finance Corporation claims

The notes held by the Finance Corporation, with interest accrued to December 31, 1941, constitute a total claim of approximately $13,281,458, after certain credits for interest on pledged bonds and a payment of $700,000 on the loan in connection with a rescission of the sale of 3,651 shares of Salt Lake Stock to the debtor. The collateral [fol. 682] securing the indebtedness to the Finance Corporation consists of the bonds, stocks, etc., enumerated in the Commissions' report, 233 I. C. C. 515, at page 524, except for changes in the amounts of Salt Lake and motor companies' stocks, the amounts of these securities on pledge now being Salt Lake stock, 45,889 shares, Denver-Colorado Springs-Pueblo Motor Way, 73,710 shares, and Rio Grande Motor Way, 1,564 shares.

In support of their contention that the stock of the Salt Lake and Salt Lake Western is without value, counsel for the insurance group rely on the severance study which they introduced at the court hearing, and the record of the Salt Lake's earnings. The severance study, severely criticized by the Finance Corporation, purported to show that for the year 1939, on the most favorable basis of computation for the Salt Lake, the Denver's income available for interest would have been increased by $323,451 if the Salt Lake and Salt Lake Western had been operated as a single independent road, interchanging traffic with the Denver at Dotsero; that the Denver had lost money by the cut-off operation; that the $391,000 of income of the Salt Lake available for interest in 1939 would have been converted into a deficit of $182,229 by the severance; that if all the roads had been operated as a consolidated system in 1939 the income available for interest would have been $2,512,184, while with the cut-off lines divorced it would have been $2,064,368. Counsel concluded that something like $500,000 a year is the maximum realizable value of the Salt Lake-Salt Lake Western to the Denver, such sum being less than the annual interest on the Salt Lake bonds outstanding. The actual earnings' record of the Salt Lake operating

the Salt Lake income bonds to provide for 4 percent fixed interest and 2 percent contingent interest. Additional considerations in support of this modification are the desirability of accomplishing the consolidation with the Salt Lake, and the fact that it was determined by the court and incorporated in the court plan. It is recommended, accordingly, that the proposal submitted to the holders of the Salt Lake income bonds shall be that the interest provisions of the bonds be modified to 4 percent fixed interest and 2 percent prior contingent cumulative interest, payable on a parity with similar fixed interest and contingent interest on the new first-mortgage bonds, and that the maturity date of the bonds be extended to the maturity of the new first-mortgage bonds.

In the event that the holders of 66⅔ percent of the Salt Lake income bonds fail to accept the proposal for modification of the bonds, and the consolidation with the Salt Lake is not effected, the claims of the Finance Corporation should be provided for as follows: For the $783,000 of D. & R. G. consolidated mortgage 4's, $10,000 of Rio Grande Western first 4's, $1,395,000 of Rio Grande Western consolidated 4's, and $4,385,000 of the debtor's refunding and improvement 5's pledged as part security for the loans, the Finance Corporation should receive the following new securities: [fol. 689] $1,039,300 of new first-mortgage bonds, $1,386,650 of new income bonds, 20,799 shares of new preferred stock, and 20,672 shares of new common stock. The balance of the claim, if consolidation is not effected, should be covered by a 12-year note to the Finance Corporation secured by pledge of the Salt Lake income bonds, the Rio Grande Southern bonds, the motorway stocks, the Salt Lake stock, and the Salt Lake Western stock. It should be provided that the Finance Corporation would have all the rights of ownership in these stocks insofar as voting such stocks is concerned. The amount of the note should be $7,500,000 and it should bear fixed interest at the rate of 1½ percent and contingent interest at the rate of one-half of 1 percent per annum, representing the prospective return on the Salt Lake income bonds pledged, plus the return on the new first-mortgage bonds which were assignable to the Salt Lake Western stock under the treatment of the Finance Corporation's claim first described. In addition to the foregoing interest the Finance Corporation should be entitled to additional interest on the note to the extent of all interest and dividends

paid on the pledged collateral other than the Salt Lake income bonds and the Salt Lake Western stock, subject to the condition that the total interest paid on the note shall not exceed 4 percent per annum. The new company's obligation as to payment of interest, or principal and interest, of this note should be limited, respectively, to the proceeds of the sale of the pledged securities and the income from such securities, without recourse to the new company for any deficiency. The reorganized company should have the right, at any time, to redeem the collateral through payment of the principal of the notes and any unpaid interest payable under the terms of the notes.

[fol. 690] This provision for an alternate treatment of the Finance Corporation's claims necessarily eliminates the allotment of first-mortgage bonds and income bonds to the Finance Corporation indicated on appendix A.

New money requirements

Whether or not the consolidation with the Salt Lake is effected, new money will be required in the reorganization for the payment of trustees' certificates outstanding in the amount of $5,000,000, and possibly for other purposes, as indicated below. The judge disapproved the use of funds in the hands of the trustees for such purposes, urging that part of the cash on hand be used for the new locomotives, authorized by court order on February 10, 1941, and that an adequate cash balance be kept on hand. He stated in this connection that the trustees considered that they should have a working balance of not less than $1,250,000. At the further hearing the debtor's general auditor testified that $2,000,000 would be ample. The debtor's cash forecast shows $3,553,618 on hand at the beginning of 1941 and $3,027,941 at the close, after payments aggregating $1,422,811 for new equipment. The cash position evidently precludes the use of funds for the payment of trustees' certificates but it might permit payment of the expenses of reorganization now remaining. By its report of August 26, 1940, in this proceeding, 242 I. C. C. 629, division 4 fixed maximum limits of allowance for compensation and expenses of trust companies, committees, their counsel, etc., up to May 20, 1940, in the total amount of approximately $268,000. Previously, approximately $225,000 had been paid out of the debtor's estate, largely as compensation of

$24,000,000. It is plain that the situation as regards the equity has remained unchanged. The court has not suggested otherwise. The Commission should reaffirm its findings that the equities of the owners of the debtor's common stock and preferred stock have no value and that the holders of claims in classes 1 and 2 are not entitled to participate in the plan; and that the equity of the holders of unsecured claims not entitled to priority is without value and that these creditors should not be permitted to participate in the plan.

New capital structure

The effective date of the new plan should be January 1, 1942, and the amount of accrued interest to that date on fixed obligations should be added to the principal amounts of such obligations as the basis for the allocation of new [fol. 694] securities. The resulting totals are shown in the second column of appendix A.

In preparing its plan the court was in possession of the system earnings statements up to and including 1940. Notwithstanding the reference in the opinion of March 6, 1941, to the desirability of keeping fixed charges within the limit of those in the Commission's plan because of uncertainties as to taxes, labor costs, etc., the fixed charges in the court plan would be $1,887,552, or $2,637,552, including the maximum payment to the capital fund, which is placed ahead of all fixed interest. As pointed out in the brief of the Finance Corporation, there would be a further increase of $411,201 if the court plan were modified so as to make the prior contingent interest on the new first-mortgage bonds a fixed charge in the event all fixed and contingent interest should be earned 1½ times in each of three calendar years in any five consecutive years, such three years to include the last two of such five years. This modification was proposed by the insurance group committee. It should be rejected for the reason that adequate treatment would be afforded to those receiving the new first-mortgage bonds through the provision that the interest payment of 1 percent is to be prior to other contingent interest and fully cumulative.

On the basis of the present record the Commission should find that, after due consideration of the probable prospective earnings of the properties in the light of their earnings experience and other relative facts, there will be

adequate coverage of fixed charges of approximately $2,000,000 per annum by the probable earnings for the payment thereof, but that the fixed charges should not exceed that by any substantial amount. Payments into the capital fund should not be included as an item in the limiting amount.

[fol. 695] The new capital structure and the allocation of securities recommended are shown in tabulated form in appendix A, based on consolidation of the Salt Lake properties and a modification of the interest on the Salt Lake income bonds. Under this plan the fixed charges would approximate $1,974,266 per annum, comprising fixed interest at 3 percent on $34,579,366 of new first-mortgage bonds, at 4 percent on $1,500,000 of Salt Lake first mortgage bonds, and 4 percent on $9,734,000 of Salt Lake income bonds, together with the estimated fixed-interest charges on the Chase Bank note extended, the Railroad Credit Corporation note extended, the loan to provide new money, assumed at $6,000,000, and the equipment obligations outstanding. Prior contingent-interest charges on the new first-mortgage bonds, the Salt Lake income bonds, and the Chase Bank note would approximate $557,086 per annum. Contingent-interest charges on the $34,925,295 of new income bonds and the Chase Bank note would total $1,587,788. The total debt of the new company under this plan would be approximately $97,330,897, and the total capitalization, taking the no-par common stock at $100 a share, would be approximately $169,185,052. Of this total, the total debt will be approximately 57 percent. Total charges ahead of dividends on the preferred stock, including the maximum payment to the capital fund and the sinking funds for retirement of bonds, would be approximately $5,129,350 as compared with $4,093,842 in the Commission's modified plan. This increase is justified on the basis of the new evidence referred to above. The Commission should find that these amounts may not be exceeded.

In its report 233 I. C. C. 515, *supra*, at pages 522 and 533, the Commission stated that the report of its Bureau of Valuation showed the cost of reproduction of the system [fol. 696] properties, less depreciation, plus lands and rights, working capital, and net additions and betterments to December 31, 1936, as $147,717,268. If to this sum be added the net changes in investment accounts, reported in the carriers' annual reports for 1937 to 1940, inclusive, the

total becomes approximately $155,900,000. A substantial addition to this sum may be expected during 1941, especially from acquisitions of equipment. On the basis of original cost, as also stated in 233 I. C. C. 515, *supra*, the total as of December 31, 1936, was $178,024,641. Adding the net changes in investment for 1937-40, this would become $186,207,418.

It is recommended that the new capitalization shown on appendix A and summarized above be approved by the Commission.

The allocation of first-mortgage bonds in the recommended plan, shown in appendix A, is substantially on the basis of the proportions adopted in the court plan, except with respect to the claim of the Finance Corporation, which, as previously indicated, should be treated on the same basis as the R. G. Western first-trust bonds. Due to the reduction in the total amount of first-mortgage bonds below that shown in the court plan, the percentage of the claims of the Denver's senior bonds to be covered by new first-mortgage bonds is necessarily reduced. Since the effective date of the recommended plan is one year later than that of the court plan, the amount of the obligations to be provided for, including equipment trusts, is increased materially. Considering the first-mortgage bonds, income bonds, and stocks, the proportionate allocations conform substantially to the court plan, except with respect to the R. G. Western consolidated-mortgage bonds and the 4,111* shares of Salt [fol. 697] Lake stock outstanding in the hands of the public. The R. G. Western consolidated-mortgage bonds are entitled to the spill-over of any bonds issuable against the earnings of the R. G. Western first trusts in excess of the claims of the latter. An application of the debtor's earnings' formula to the amounts of new first-mortgage and new income bonds now contemplated, with an allowance for the stock of the Utah Fuel Company, indicates that the R. G. Western consolidateds are entitled to receive new income bonds for approximately 25 percent of the claim. The recommended plan provides accordingly, assigning new preferred stock to the remaining 75 percent of claim.

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* These shares comprise the 460 shares referred to in the Commission plan and the 3,651 shares released by the Finance Corporation.

Counsel for the trustee of the debtor's general-mortgage contend that the holders of the general-mortgage bonds should receive new common stock to the extent of 50 percent of their claim, based on facts brought out in the opinion of the court and at the further hearing before the Commission, largely relating to the improved condition of the railroad and its recent earnings record. It is true that the evidence introduced since the Commission announced its modified plan affords a basis for higher fixed charges and a larger total capitalization, as reflected in the plan herein recommended, but the claim represented by the general-mortgage bonds, including interest accruals to January 1, 1942, is so large that an increase of the percentage allocation of new common stock from 33⅓ percent to 50 percent would increase total capitalization to a prohibitive figure. As indicated in the Commission reports, no earnings were available for the general-mortgage bonds on the basis of the test-period year and the segregation formula.

The claim of the Chase National Bank on its loan of $1,500,000 has been computed on the basis of interest at 6 [fol. 698] percent from the date of the filing of the debtor's petition under section 77, in accordance with the contentions of the bank. This matter has not been determined by the courts. Subject to such determination, as stated in the Commission's modified plan, the note should be extended for a term of 10 years, bearing interest at 4 percent per annum, payable semiannually, but such interest should be contingent upon, and the payment thereof should be limited to, the total of interest and dividends paid by the new company on the collateral securing the new note or notes. The provisions of the Commission's modified plan for the claim of the Chase National Bank should be modified only with respect to the new collateral to be pledged, as shown in detail hereinafter.

The Railroad Credit Corporation in its recent brief explains that, as of June 30, 1941, the unpaid balance of the original loan of $500,000 had been reduced to $266,715.09, due to the application of distributive shares credited against the debtor's account arising out of the fund administered by the Credit Corporation, and the amount of unpaid interest was $904.88, making a total claim of $267,619.97. Explanation is also made of an error by the court in stating the amount of the Credit Corporation's claim as of January 1, 1941. For present purposes the claim of the Credit Cor-

poration, as of January 1, 1942, is computed at $268,953. The Credit Corporation objects to the court's proposal that its claim be paid in cash for the reason that it eliminates the option accorded the reorganization committee, under the Commission's plan, to extend the note in its discretion for not exceeding six months if payment in cash should not be made on the date of consummation of the plan, and also eliminates the provision for deducting the balance due the debtor under the marshaling and distributing plan. The [fol. 699] provision for the Credit Corporation claim as stated in the Commission's modified plan should be retained, with appropriate revision of the amounts of new securities issuable against the $662,000 of D. & R. G. consolidated-mortgage 4-percent bonds now under pledge, as shown in the summary later.

Sale of Stock for Future Control

The court plan provides for the issue of 379,049 shares of class-A common stock, having no par value, the beneficial interest in same to be distributed among the Denver's bondholders as indicated; the shares to be issued after five years and upon the expiration of a voting trust. The Finance Corporation would have the right during two years to convert the $6,000,000 of income bonds, taken by it at par in the new financing, into 100,000 shares of new class-B common stock. Such stock would be issued to the Finance Corporation only in the event a sale of control to connecting roads is arranged, subject to the condition that no more than 40 percent of the class-B stock should be sold to any one road. By this sale of stock the Finance Corporation would reimburse itself for the $6,000,000 of income bonds taken. If the conversion rights with respect to the class-B stock should be forfeited, the voting trust for the class-A stock might be continued by the court in order to insure satisfactory management for a stabilizing period, during which period the voting trustees would have the right of sale upon approval by the holders of two-thirds of the beneficial interests, but again subject to the condition that not more than 40 percent of the stock could be sold to any one purchaser.

The insurance group offers no objection to this part of the court plan except to suggest a condition to protect the [fol. 700] fair development, on equal terms, of the Denver

gateway and the Pueblo gateway. The Finance Corporation, on brief, points to the fact that before any railroad could acquire the class-B stock, authority must be obtained from the Commission under section 5, part 1, of the Interstate Commerce Act, within the 2-year period named, and if a contest should be started by another road the opportunity to sell the stock might be lost.

There is nothing of record to afford assurance that any Eastern carrier would purchase the stock, except the request of the trustee of the Missouri Pacific that only the new common stock of the reorganized Denver shall have voting rights and that the Missouri Pacific shall be afforded the right to acquire, upon fair and reasonable terms, one-half of such common stock. This request was concurred in by the chambers of commerce of Pueblo, Colorado Springs, and Salida, Colo., and by the city of Colorado Springs. The Missouri Pacific has indicated that it would not be interested in having a share in the control of the reorganized Denver unless it could purchase 50 percent of the stock.

The position of the Missouri Pacific trustee was known to the Commission when it announced its plan and consideration was also given to the arguments advanced in behalf of the debtor, the insurance group, and the various civic bodies to the effect that the plan should provide means whereby the proprietary companies might retain control of the Denver. As to voting rights of the new stock, however, the Commission should not approve the issue of any new preferred or common stock without voting power.

Other arguments were heard urging that the Burlington or the Rock Island should be given an opportunity to ac- [fol. 701] quire an interest in the reorganized Denver. In 233 I. C. C. 515, *supra*, at page 581, the Commission concluded that it was not its duty, in view of the finding that the present stockholders have no equity, to decide for the new owners what affiliations with other systems would be most advantageous, or to fix a price for stock to be sold. It was provided in the Commission's order of April 2, 1940, section K, that all the preferred stock and common stock of the new company, except directors' shares, should be deposited under an escrow agreement for a term of 10 years, and could be sold, subject to approval by the Commission and by not less than a majority of the holders of each class of stock, respectively.

Under the plan herein recommended the new financing may be provided either by the Finance Corporation or through private channels by means of a note, secured by adequate collateral. An analysis has been made, as described above, of the collateral securing the Finance Corporation's notes, the new securities assignable to this collateral have been indicated, and the element of strategic value in the cut-off has been recognized by allocating to the Finance Corporation, in the recommended plan, certain amounts of new first-mortgage bonds and income bonds rather than the securities allocable to the pledged bonds and stocks. From these considerations it does not appear that any valid basis exists for giving the Finance Corporation control of the new company, and, accordingly, the issue of a special class of stock carrying sole voting power is unnecessary. The Commission should adhere to its former conclusion regarding future control and should retain the provision for the voting trust for the preferred and common stocks as stated in section K of the order of April 2, 1940, *supra*.

[fol. 702] The court plan suggests that the common stock under that plan should not be sold except by consent of two-thirds of the holders of the beneficial interests, rather than a majority. This question was considered heretofore, and it is recommended that no change be made.

Reorganization committee

The order of April 2, 1940, *supra*, provided for a reorganization committee consisting of five members, two to be designated by the insurance group committee; one by the trustee under the debtor's refunding and improvement mortgage, one by the trustee under the general mortgage, and one by the Finance Corporation. The judge, pointing out that the properties of the debtor and secondary debtor are located almost wholly in the States of Colorado and Utah, urges that all the members of the reorganization committee be residents of these States, that all meetings of the committee be held in Denver, at the main office of the debtor, and that counsel for the committee, if any are necessary, shall be appointed by the court. Later, the judge expressed the opinion that the property should be under the direct control of the court until the reorganization is completed; also that the insurance group committee should be

represented by only one member on the committee and that the court or some other proper authority should name one member to represent the public interests of the citizens of Colorado. In its report in *St. Louis-S. F. Ry. Co. Reorganization*, 242 I. C. C. 323, the Commission ruled adversely upon a similar request for local representatives on a committee and concluded that those financially interested in the property should be permitted to make the appointments to the committee. It is recommended that no change be made in the provisions for the reorganization committee in the instant case.

[fol. 703] *Miscellaneous provisions*

In addition to placing the capital fund ahead of all fixed-interest payments, the judge urges that the annual depreciation charge on equipment should be set aside in a special cash fund and used only to take care of interest and principal payments on equipment-trust obligations now outstanding or hereafter issued, and to take care of, in whole or in part, the purchase, building, or improvement of equipment. These provisions are stated to be the best guarantees that can be put into the plan to assure the proper upkeep and maintenance of the property.

It is recommended that no change should be made in the Commission's plan regarding payments into the capital fund. With the virtual completion of the improvement program, including new equipment, the suggestion of the judge as to placing the payments into the capital fund ahead of fixed interest and the impounding of equipment depreciation charges do not appear to be necessary. However, if, after the new plan shall have been certified to the court, the judge is still of the view that these changes should be made in the plan, it should be provided that he may introduce them without returning the plan to the Commission.

Another unusual feature of the court plan is in connection with the interest on the new 4½-percent income bonds. The court proposes that this interest shall accumulate only to the extent of three-fourths of the income available for the payment thereof. It would seem, as pointed out in the brief of the insurance group, that the purpose of this provision may have been to permit the company to apply more of its income to additions and betterments than would be the case under the interest provisions of the Commission

[fol. 704] plan for the new income bonds. The proposal appears unnecessary and should not be adopted.

In connection with the new first-mortgage bonds to be issued in the reorganization, the Commission's plan, 239 I. C. C. on page 501, provided that additional bonds shall be issuable under certain conditions, and included the following:

> (2) When on any interest payment date the aggregate principal amount of first-mortgage bonds outstanding, plus all other funded debt bearing fixed interest, shall exceed either 35 percent of total capitalization, as hereinafter defined, or the result obtained by deducting the principal amount of funded debt bearing contingent interest from 60 percent of the total capitalization at the time outstanding, the new company shall pay to the mortgage trustee as a sinking fund a sum equal to 50 percent of the available net income of the preceding calendar year after providing for all fixed charges, the payment to the capital fund, contingent interest, and sinking-fund payments for the retirement of income bonds as hereinafter prescribed.

Counsel for the insurance group suggest that the foregoing percentage figures of 35 percent and 60 percent be increased to 45 percent and 70 percent, respectively, so that "this sinking fund will constitute only a practical check on injudicious financing rather than a harsh and impracticable constraint on the new company." In none of his opinions did the judge refer to these percentages, nor has any of the parties, except the committee, objected to them. The figures were adopted in the approved plan after care-[fol. 705] ful consideration by the Commission and should not be modified.

Counsel for the committee further suggest that the following provision of the Commission's plan (page 600) for the new first-mortgage bonds should be omitted;

> (4) No additional bonds of series A other than those to be issued under the plan may be issued, and no bonds may be issued of any series having a maturity on or before the maturity of the bonds of series A, except bonds issued on the basis of the acquisition of new equipment or to provide cash for such acquisition.

Counsel further suggest the omission of the corresponding provision (page 602) for the new income bonds reading:

> (3) no income bonds other than those issued in connection with the plan shall be issued having a maturity on or before the maturity of the initial issue, except bonds issued on the basis of the acquisition of new equipment or to provide cash for such acquisition.

These suggested omissions may be for the purpose of removing an apparent conflict with the following provision in the Commission's plan (pages 599 and 601) for the first-mortgage bonds, and a similar provision for the income bonds:

> Additional bonds shall be issuable under the mortgage without limit as to amount, or within such limit as may be specified in the mortgage, having such dates, maturities, coupon rates, redemption, and sinking-fund provisions as may be determined by the board of directors and approved by this Commission.

[fol. 706] The conflict arises from the inclusion of "maturities" without qualification, and should be removed by revising the language in connection with the first mortgage provision to read: "maturities (subject to the restriction stated under (4) below)". A similar revision should be made in the case of the income bonds, as hereinafter provided.

It is recommended that a general sinking fund be provided for the new first-mortgage bonds, the annual payments to equal one-half of 1 percent of the maximum principal amount of such bonds at any time authenticated and delivered, including bonds under pledge.

Debtor's Position

Despite the Commission's finding that the debtor's stockholders have no equity, and the court's failure to find otherwise, the debtor still contends that an equity of at least $40,000,000 exists, that no reorganization can be accomplished without a valuation of the property, and that the fairness of the court plan cannot be determined without such valuation. However, various specific objections to the court plan are offered, such as its recognition of interest accruals in excess of $7,000,000 since September 1, 1935, the

treatment of the Finance Corporation, the provision for sale of control, and the inclusion of the Junction, which is not a debtor under section 77. The debtor states that it "reserves its objections to the proceedings going forward before the Commission or the court until a new plan or plans are filed, the feasibility thereof determined, and hearings thereon ordered in accordance with subsection (d) of section 77 of the Bankruptcy Act."

The debtor's general position with respect to the purpose and scope of section 77, and the rights of creditors and [fol. 707] stockholders, was stated in 233 I. C. C. 515, *supra*, at pages 573 and 578, and requires no further comment. The main features of the court plan have been considered herein and conclusions recommended, except as to the propriety of including the Junction in the plan. All the plans which have been promulgated, including the court plan, have assumed that the Junction could be merged with the debtor in this reorganization, although the Junction is not in trusteeship under section 77. It has no separate operating organization. It is operated under lease by the debtor, and the leasehold interest is in trusteeship. Its stock is pledged under the debtor's refunding and improvement mortgage. The Central Hanover Bank & Trust Company is trustee of the Junction first mortgage, as well as the R. G. Western first-trust mortgage. Throughout the entire proceedings before the court and the Commission, counsel for Central Hanover Bank have discussed the claims of both classes of bondholders on the same basis with respect to the plan and the rights of these bondholders, without reference to the fact that the Junction is not in trusteeship. The court disregarded it also in preparing its plan. The Commission should not attempt to adjudicate the matter but should provide in the plan for the inclusion of the Junction if legally possible.

Summary

The Commission should approve a new plan in accordance with the foregoing recommendations and an appropriate order should be entered adopting the revisions in the order of April 2, 1940, indicated below.

A. The effective date of the plan should be January 1, 1942.

[fol. 708] B. This section should be modified to read:

> Consolidation of The Denver and Salt Lake Railway Company, hereinafter called the Salt Lake, with the

debtor's properties shall be undertaken and shall be effective if, and only if, the holders of at least 66⅔ percent in aggregate principal amount of Salt Lake income bonds voluntarily consent, within 90 days of the submission of the proposal to them, to (1) an extension of the maturity to that of the first-mortgage series-A bonds to be issued by the new company, (2) the modification of interest terms to fixed interest of 4 percent per annum; and prior contingent cumulative interest of 2 percent per annum, payable when fixed and contingent interest, respectively, on the new first-mortgage bonds become payable, and (3) the call for payment or for refunding (at the convenience of the reorganized company) of income bonds not consenting. In the event of such consolidation with the Salt Lake the tunnel contract shall be assumed by the reorganized company and the present trackage agreement canceled; the properties to be consolidated will then be those of the debtor, the secondary debtor, the Rio Grande Junction Railway Company, hereinafter called the Junction, the Goshen Valley Railroad Company, and the Salt Lake. These properties shall be merged or consolidated to the extent legally possible by transfer of the subsidiary properties to the reorganized debtor or by transfer of all the properties to a new corporation organized for the purpose, hereinafter referred to as the new company. Unless such consents are obtained from the holders of the Salt Lake income bonds within the period stated, no actual consolidation of the Salt Lake and the Salt [fol. 709] Lake Western with the debtor will be effective, and in that event only the properties of the debtor, the Junction, and the Goshen Valley shall be merged or consolidated in the manner indicated above; no provision will be made for the Salt Lake stock held by the public, and the trackage agreement will remain in effect.

C. The capitalization of the new company, as of January 1, 1942, should be restated to conform to that recommended herein.

D. This section, referring to the surrender of existing securities, should be modified to read as follows:

Upon the consummation of the plan, including consolidation with the Salt Lake, and the issue, distribution,

and modification of securities as herein provided, the existing stocks of the debtor and its affiliated companies, together with all mortgage bonds issued and outstanding, including bonds pledged, and excluding all bonds of the Salt Lake, shall be surrendered to the reorganization committee and canceled, and all mortgages, other than the Salt Lake, shall be satisfied of record and canceled. In the event that consolidation of the Salt Lake is not effected, the stocks to be surrendered and canceled shall not include those of the secondary debtor and the Salt Lake.

E. The first paragraph of this section of the order, regarding the lien of the new first-mortgage bonds, should be modified to read as follows:

(E). The new first mortgage shall constitute a first lien, subject only to the lien of equipment-trust obligations, on (1) all property owned by the debtor, the secondary debtor, (in the event that consolidation with the Salt Lake is effected, otherwise excluding the sec- [fol. 710] ondary debtor) or their trustees in bankruptcy as such, the Junction, and the Goshen Valley, at the time of effectuation of the plan, including securities, equipment, and the equity in such equipment as may be subject to equipment-trust obligations, but excluding the narrow-gage railway lines of the debtor, and equipment and property essential to the operation thereof, and excluding also the capital stock of the Utah Fuel Company; and (2) all property acquired by the new company after the date of the new first mortgage for use on or in connection with the mortgaged property subject only to such encumbrances or purchase-money liens as may exist or be created at the time of acquisition. So far as the reorganization committee hereinafter provided for may deem practicable, such lien shall be in the form of a direct mortgage, but it may take the form of the pledge or assignment of securities of a corporation or corporations owning property to which the lien is intended to extend. In the event of the consolidation of the properties of the Salt Lake as a part of the new system, the new first mortgage shall constitute a lien on such properties subject to the lien of the Salt Lake first-mortgage bonds and income bonds.

The provision in the third paragraph for the issue of first-mortgage bonds should be modified to read as follows:

> The first-mortgage bonds may be issued in series, all equally secured as to principal and interest. Approximately $34,579,366 of series-A bonds shall be issued in connection with the reorganization in partial settlement of claims, and additional bonds as may be necessary for [fol. 711] the purpose of pledge or for sale in connection with new financing, as provided in the plan. The series-A bonds shall have a term of 50 years and shall bear fixed interest at the rate of 3 percent and contingent interest in addition at the rate of 1 percent per annum, fully cumulative, both payable semiannually.

The first part of the fourth paragraph under section E should be modified to read as follows:

> Additional bonds shall be issuable under the mortgage without limit, or within such limit as may be specified in the mortgage, having such dates, maturities (subject to the restriction stated in (4) below), coupon rates, redemption, and sinking-fund provisions as may be determined by the board of directors and approved by the Commission. Such additional bonds shall be issuable on such bases, including the refunding of debt and the deposit of cash as shall be prescribed in the mortgage . . .

The following new provision should be introduced under section E of the order:

> A sinking fund shall be provided for retirement of first-mortgage series-A bonds to be issued in the reorganization, the annual payments to be equal to one-half of 1 percent of the largest principal amount of such bonds at any time authenticated and delivered, including bonds under pledge, such payments to be made if the available net income for the previous year is sufficient therefor after payment of all fixed charges and payment into the captial fund, but before payment of contingent interest. Such payments shall not be cumulative. The sinking fund shall be applied to the retire- [fol. 712] ment of first-mortgage series-A bonds by purchase at not exceeding the current redemption price plus

accrued interest, or by redemption. All first-mortgage bonds of series-A so acquired shall be canceled and no bonds of any kind issued to refund them.

In accordance with this provision, paragraph (d) under section G of the order should be modified to read as follows:

(d) All payments to sinking funds established or which may have been established, as provided above, for the retirement of first-mortgage bonds.

F. The opening provisions in the second paragraph of this section, applying to the new income bonds, should be modified to read as follows:

The income-mortgage bonds may be issued in series, all equally secured as to principal and interest. Approximately $34,925,295 of series-A income bonds shall be issued in the reorganization in partial settlement of claims, and additional bonds as may be necessary for the purpose of pledge, as provided in the plan. Additional bonds of other series shall be issuable without limit as to amount, or within such limit as may be specified in the mortgage, having such dates, maturities (subject to the restriction stated under (3) below), rates of contingent interest, redemption, and sinking-fund provisions as may be determined by the board of directors and approved by this Commission * * *.

G. The date December 31, 1938, in the second paragraph of this section should be changed to June 30, 1941.

[fol. 713] The opening clause of the third paragraph of this section should be modified to read as follows:

(a) All fixed charges, determined in accordance with such accounting rules or practice of the new company accrued during such income period, including fixed-interest payments on the Salt Lake first-mortgage bonds and income bonds in the event consolidation with the Salt Lake is effected under the plan; provided howev- * * *

The following new matter should be added to the end of paragraph (e) of this section:

and provided further, that the court may alter the foregoing, without returning the plan to the Commis-

sion for revision, to the extent of placing the payments into the capital fund ahead of all payments of fixed interest, and, on the same basis, the court may make appropriate provision in the plan for the establishment and maintenance of a special fund representing the charges to depreciation of equipment, for use in acquiring new equipment or making additions and betterments to existing equipment.

Under (d) of this section of the order, after the sentence, "the available net income for each income period shall be applied to the following purposes and in the following order", there should be inserted a new provision for the application of available net income, and minor changes should be made in others, so that the former subsections (1), (2), (3), and (4) shall be modified to appear as follows:

(1) All available net income shall, to the extent required, and subject to the provision hereinbefore made for payment in even multiples of one-fourth of 1 percent and postponement of fractional surplus, be applied to the payment, on April 1 in each year, of prior [fol. 714] contingent interest at the rate of 1 percent per annum prorata on the first-mortgage bonds, series A, of the new company then outstanding and on the modified Salt Lake income bonds outstanding, in the event of consolidation with the Salt Lake; otherwise on the first-mortgage bonds of the new company only.

(2) All available net income shall, to the extent required and subject to the provision hereinbefore made for payment in even multiples of one-fourth of 1 percent and postponement of fractional surplus, be applied in the payment on April 1 of each year to interest on the then outstanding income-mortgage bonds of the new company, excluding bonds then held in the sinking fund under the new income mortgage, but including bonds under pledge, accruing during the income period ending on the next preceding December 31, and to the payment of any unpaid accumulated interest on said bonds.

Former subsection (2) should be revised only in its opening lines, which should read as follows:

(3) Any then remaining available net income shall be applied, until all the income bonds of the new company

shall have been retired, on April 1 in each year, to a sinking fund * * *.

Former subsections (3) and (4) should be changed to (4) and (5), respectively, and the text should remain unchanged.

In the paragraph following (5), the first date June 30, 1938, should be changed to December 31, 1941, and the second date June 30, 1938, should be changed to January 1, 1942.

[fol. 715] The concluding paragraph under section G should be modified to read as follows:

> (c) For the purpose of paying fixed interest on the bonds outstanding under the new first mortgage in a year or years in which the net earnings of the new company available for interest on said bonds shall be inadequate for the payment of such interest, and only to the extent of such inadequacy.

Section H of the order, describing stocks of the new company, should be modified in respect of the preferred stock (1) to provide that approximately 290,136 shares shall be issued in the reorganization, excluding shares which may be issued for pledging purposes, and (2) to change the beginning of the calendar year in respect of which dividends may first be paid at the rate of 5 percent from January 1, 1939, to January 1, 1942.

The provisions for the new common stock should be modified to read as follows:

> The common stock of the new company shall be authorized in the amount of 1,000,000 shares, of no par value, of which approximately 428,406 shares shall be issuable in the reorganization, excluding shares to be pledged, and approximately 290,136 shares shall be reserved for conversion of the preferred stock.

Section I of the order should be revised to show the amounts and kinds of new securities to be issued for settlement of the claims of each class of bond-holders and the stock of the Salt Lake held by the public in the event consolidation takes place, all according to the plan herein recommended. The first two paragraphs of section I would then read as follows:

> [fol. 716] I. The holders of bonds of the classes shown below shall receive for each $1,000 bond and all unpaid

interest thereon, as of the effective date of the plan, the following amounts of new securities:

Rio Grande Western Railway Company first-trust bonds, $728.77 of new first-mortgage bonds and $551.23 of new income bonds; Rio Grande Western Railway Company consolidated-mortgage bonds, $322.50 of new income bonds and $967.50, par value, of new preferred stock; Junction first-mortgage bonds, $757.63 of new first-mortgage bonds and $571.54 of new income bonds; Denver & Rio Grande Railroad Company consolidated-mortgage 4-percent bonds, $260 of new first-mortgage bonds, $260 of new income bonds, $260, par value, of new preferred stock, and 5.2 shares of new class-A common stock; Denver & Rio Grande Railroad Company consolidated-mortgage 4½-percent bonds, $267.50 of new first-mortgage bonds, $267.50 of new income bonds, $267.50, par value, of new preferred stock, and 5.35 shares of new class-A common stock; the debtor's refunding and improvement 5-percent bonds, $272.50 of new first-mortgage bonds, $272.50 of new income bonds, $272.50, par value, of new preferred stock, and 5.45 shares of new common stock; the debtor's refunding and improvement 6-percent bonds, $287 of new first-mortgage bonds, $287 of new income bonds, $287, par value of new preferred stock, and 5.74 shares of new common stock; the debtor's general-mortgage bonds, 4.69 shares of new common stock.

Section I should be further modified as follows:

By elimination of the provision for redemption of the [fol. 717] Salt Lake first-mortgage bonds and income bonds;

By revising the provision for the claim of the Railroad Credit Corporation only in respect of the securities to be issued in exchange for those now under pledge, the modification to show $172,120. of new first-mortgage bonds, $172,120 of income bonds, $172,120, par value, of new preferred stock, and 34.424 shares of new common stock;

By revising the provision for the claim of the Chase National Bank to provide that the new note or notes shall be in face amount equal to that of the present note plus interest accrued to December 31, 1941, in the amount allowed by the court, and by changing the amounts of new securities issuable as collateral so that they will be in

accordance with the recommended plan, viz, $1,661,160 of new first-mortgage bonds, $1,661,160 of new income bonds, $1,661,160, par value, of preferred stock, and 33,223 shares of common stock;

By modifying the provision for payment of the notes to the Finance Corporation, stating the total amount of the claim with interest to January 1, 1942, and the amounts and kinds of new securities issuable, in full settlement of this claim, against the collateral now held by the Finance Corporation, as hereinbefore shown, viz., on the basis of consolidation with the Salt Lake, $7,570,431 of new first-mortgage bonds and $5,711,027 of income bonds. On the basis of continuing separate operation of the Salt Lake under the trackage agreement, the new securities issuable to the Finance Corporation in respect of the debtor's bonds held as collateral should be $1,039,300 of new first-mortgage bonds, $1,386,650 of income bonds, $2,079,850, par value, of preferred stock, and 20,672 shares of common stock, and in respect of the remainder of the Finance Corporation [fol. 718] claim a 12-year collateral note shall be issued by the new company in the principal amount of $7,500,000, secured by pledge of the $1,266,000 of Salt Lake income bonds, $1,777,000 of Rio Grande Southern first-mortgage bonds, 73,710 shares of Denver-Colorado Springs-Pueblo Motor Way stock, 1,564 shares of Rio Grande Motor Way stock, 36,310 shares of Salt Lake Western stock, and 45,889 shares of Salt Lake stock now pledged with the Finance Corporation. The provisions regarding the payment of interest on this note and the obligation of the new company with respect to interest and principal should be as hereinbefore stated.

The paragraph in the order following the provision for settlement of the claim of the Finance Corporation should be modified to read as follows:

> The $5,000,000 of trustees' certificates outstanding shall be paid in cash in the manner described below. The expenses of reorganization not heretofore paid shall be paid out of the debtor's funds.

Section J of the order, referring to cash financing in connection with the reorganization should be modified to read as follows:

> J. The requirements for new cash in connection with the reorganization shall be for the purpose of paying

the $5,000,000 of trustees' certificates outstanding, and, in the event the holders of the required percent of Salt Lake income bonds shall accept the proposal for modification of interest, for the payment, purchase, or refunding of income bonds the holders of which do not assent to such proposal. The necessary and reasonable amount of cash required for these purposes shall be determined by the reorganization committee, sub-
[fol. 719] ject to approval by the court. The funds shall be advanced by the Finance Corporation or obtained through private channels and evidenced by a collateral note of the new company for a term of 12 years secured by pledge of new first-mortgage bonds in an amount equal to 125 percent of the amount of the loan; or such other amount of bonds as may be required by the lender and approved by this Commission. As an alternative to such a loan, not exceeding $10,000,000 of new first-mortgage bonds may be issued for sale to provide the new money required, under terms and conditions determined by the reorganization committee and approved by the court and this Commission.

The second paragraph of section L of the order, regarding the assumption by the new company of obligations with respect to agreements and contracts which by their terms do not terminate at or prior to the conclusion of the reorganization proceeding, etc., should be prefaced by the following opening phrase:

> In the event consolidation of the various companies, including the Salt Lake, shall be effected, as herein provided, * * *

The paragraph, as thus modified, should be supplemented by the following new statement:

> In the event consolidation of the Salt Lake is not effected, the foregoing provisions for assumption of the lease agreements with the Northwestern Terminal Railroad Company and with the Moffat Tunnel Improvement District shall not apply, and the assumption of obligation by the new company with respect to agree-
> [fol. 720] ments and contracts shall be confined to those of the debtor and its affiliated companies other than the Salt Lake.

Section N of the order should be modified by changing the stated effective date of the plan from June 30, 1938, to January 1, 1942, and revising the closing sentence to read as follows:

> The merger or consolidation of the properties, including the Salt Lake if the proposal is accepted by the holders of the required percent of bonds, should be effected in a manner to be determined by the reorganization committee, subject to approval by the Commission and the court, and under a fair and equitable arrangement to protect the interests of the railroad employees affected, as required by law.

The following ordering cause should be eliminated:

It is further ordered, That, except insofar as the modifications of plan herein approved are modifications sought in the aforesaid petitions, such petitions be, and they are hereby, denied.

And it should be stated in the new order that such order supersedes the orders of July 11, 1939, and April 2, 1940.

Filed Sept 2, 1941. G. Walter Bowman, Clerk.

(Here follows 2 pasters, side folios 721-722, 723)

[fols. 721-722]

APPENDIX A.

Recommended plan, on basis of consolidation with the Denver & Salt Lake
Pledged securities omitted

D. & R. G. W.	Claims as of Jan. 1, 1942	Undisturbed or extended	First mortgage bonds; 3% fixed interest, 1% prior contingent interest	Income bonds 4½% interest	Preferred stock 5%	Common stock no-par-value; shown here at $100 a share
Equipment obligations	$8,254,825	$8,254,825				
R. G. West. first 4's, with interest	19,443,200		57% 11,070,000	43% 8,373,200		
R. G. West. consol. 4's, with interest	19,453,200			25% 4,863,300	75% 14,589,000	
R. G. June. first 5's, with interest	2,658,333		57% 1,515,250	43% 1,143,083		
D. & R. G. consol. 4's, with interest	44,362,500		20% 8,872,500	20% 8,872,500	20% 8,872,500	40% 17,745,000
D. & R. G. consol. 4½'s, with interest	8,535,925		20% 1,707,185	20% 1,707,185	20% 1,707,185	40% 3,414,370
Refunding and impt. 5's, with interest	16,350,000		20% 3,270,000	20% 3,270,000	20% 3,270,000	40% 6,540,000
Refunding and impt. 6's, with interest	2,870,000		20% 574,000	20% 574,000	20% 574,000	40% 1,148,000
General 5's, with interest	41,979,600					33⅓% 13,993,200
Chase Nat. Bank note, with interest	*2,068,458	[2] 2,068,458				
R. R. Credit Corp. note, with interest	*268,953	[2] 268,953				
R. F. C. notes, with interest	*13,281,458		57% 7,570,431	43% 5,711,027		
Unsecured claims	*440,000					
Trustees' certificates	5,000,000	[3] 6,000,000				
Reorganization expenses	*500,000	pay in cash				
Totals, D. & R. G. W.		16,592,236	34,579,366	34,514,295	29,013,585	42,840,570
Denver & Salt Lake—Stock		4,111 sh.		411,000		
First-mtge. 4% bonds	1,500,000	[4] 1,500,000		34,925,295		
Income bonds 6%	9,734,000	[5] 9,734,000				

Summary of Recommended Plan

New capital structure

Equipment obligations	$8,254,825
Chase Bank note, extended	2,068,458
Railroad Credit Corporation note, approximate	268,953
Loan for new money, approximate	6,000,000
New first-mortgage bonds	34,579,366
D. & S. L. first mortgage bonds	1,500,000
D. & S. L. income bonds	9,734,000
	62,405,602
New 4½ percent income bonds	34,925,295
Total debt	97,330,897
Preferred stock	29,013,585
Common stock at $100	42,840,570
	169,185,052

Annual charges

	Fixed	Prior Contingent	Contingent	Preferred Dividends
Equipment obligations	$195,000			
Chase Bank note	49,835	$46,612	$46,150	
R. C. C. note	2,690			
Loan for new money, approx.	240,000			
New first-mtge. bonds	1,037,381	345,794		
D. & S. L. first-mtge. bonds	60,000			
D. & S. L. income bonds	389,360	194,680		
New income bonds			1,571,638	
New preferred stock				1,450,679
	1,974,266	587,086	1,587,788	1,450,679
Capital fund		750,000		
Sinking fund first mtge.		172,897		
Sinking fund income mtge.			87,313	

* Subject to adjustment.

[1] Chase Bank note, as extended, will be secured by pledge of
- New first-mortgage bonds $1,661,160
- New income bonds 1,661,160
- New preferred stock 1,661,160
- New common stock ..... 33,223 shs.

[2] Railroad Credit Corporation note, if extended, will be secured by pledge of
- New first-mortgage bonds $172,120
- New income bonds 172,120
- New preferred stock 172,120
- New common stock ..... 3,443 shs.

[3] Tentative amount of loan from the Finance Corporation or others to provide funds for paying $5,000,000 of trustees' certificates and for other purposes as described in the plan.

[4] The Salt Lake first-mortgage bonds will remain undisturbed whether or not consolidation with the Salt Lake is effected, but in the event of consolidation the interest obligation will be on a parity with the fixed interest on the first-mortgage bonds of the new company.

[5] The Salt Lake income bonds will remain undisturbed as to lien. Consolidation will be effected if the holders of at least 66⅔ percent of the bonds consent, within 90 days of the submission of the proposal, to an extension of the maturity to the maturity date of the first-mortgage bonds of the new company and to a modification of the interest terms to 4 percent fixed interest and 2 percent prior contingent interest, both on a parity with fixed and prior contingent interest on the first-mortgage bonds of the new company. In the event of rejection of the proposal, the Salt Lake income bonds will remain undisturbed in every respect.

[Ed. 723]

Appendix 4

Suggested Plan
In Modification of Proposed Report

	Total Claim 1-1-42	Undisturbed or Extended	First Mtg. Bonds 3%-1%	% of Total Claim	Income Bonds	% of Total Claim	Preferred Stock	% of Total Claim	Common Stock	% of Total Claim
Equipment Obligations	$8,254,825(8)	$8,254,825(8)								
R. G. W. 1st 4's	19,443,200		$14,728,854	75.75	$4,714,346	24.25				
R. G. W. Consol 4's	19,453,200				5,835,960	30.00	$13,617,240	70.00		
R. G. J. 1st 5's	2,658,333		1,963,300	73.85	695,033	26.15				
D. & R. G. Consol 4's and 4½'s	52,898,425		14,026,121	26.51	10,579,685	20.00	11,212,671	21.20	$17,079,948	32.29
R. & I. 5's and 6's	19,220,000		4,971,599	25.87	3,844,000	20.00	4,073,988	21.20	6,330,413	32.93
General 5's	42,352,200								20,085,102	47.42
R. F. C.	13,281,458		4,255,671(1)	32.04	9,025,787	67.96				
Chase Bank Note	2,068,458	2,068,458(9)								
R. C. C. Note	268,953	268,953(10)								
Unsecured Claims	440,000									
Trustees Certificates	5,000,000	4,000,000(2)								
Reorganization Expenses	500,000(3)									
D. & S. L. Minority Stock	4,111 sh.				411,100					
D. & S. L. 1st 4's	1,500,000	1,500,000(4)								
D. & S. L. Incomes	9,734,000	9,734,000(5)								
Total			$39,945,545(6)		$35,105,911(6)		$28,903,899(6)		$43,495,463(6)	
Charges:(11)										
Equipment Trust's		$195,000(8)								
Interest on New Money Bonds		160,000								
Interest on D. & S. L. 1st 4's		60,000								
Fixed Interest on D. & S. L. Income's		292,020								
Fixed Interest on New First's			1,269,720							
Total Fixed Interest			$1,976,740							
Capital Fund			750,000							
Prior Cont. Int.—New First's			423,240							
Prior Cont. Int.—D. & S. L. Income's			97,340							
Total Prior Cont. Int.			$520,580							
First Mtg. Sinking Fund			236,620(7)							
Total Through 1st Mtg. S. F.			$3,483,940							
Income 4½'s Interest					1,662,264					
Income Mtg. Sinking Fund					92,348					
Total Charges before Pfd. Div.					$5,238,552					
Preferred Dividend							1,542,343			
Grand Total							$6,780,895			

(1) Indicated distribution for collateral other than Denver Bonds considered as constant (per Court Plan); the change reflects decrease of distribution to system collateral. The new first mortgage bonds issuable in respect of the pledged Denver bonds are $9,696 for the Trust's, $270,028 for the Eastern Consol's and $1,546,654 for the R. & I.'s.

(2) Assumes $2,000,000 Trustees Certificates will have been paid in cash.

(3) To be paid in cash from treasury.

(4) Undisturbed—4% interest.

(5) 3% fixed, 1% prior contingent interest. $1,266,000 additional principal amount (representing the Salt Lake Income's pledged with RFC) are to be pledged under the new First Mortgage.

(6) Like Proposed Report, excludes pledged securities.

(7) Includes ½ of 1% on $5,000,000 New 1st Mtg. bonds pledged for New Money Bonds and $42,323,993 New 1st Mtg. bonds outstanding and pledged for Chase and R. C. C. Notes.

(8) The actual amount will be only $6,472,000 for principal and $151,853 for interest, but the Examiner's figures are retained for ease of comparison.

(9) This will be secured by $2,150,149 first mortgage bonds, $1,661,160 income bonds, $1,760,547 of preferred stock and $2,733,944 of common stock (at $100 per share).

(10) Subject to reduction by distributions under Marshalling Plan. To be secured by $228,299 of first mortgage bonds, $172,120 of income bonds, $182,418 of preferred stock and $277,763 of common stock.

(11) Figures include charges on all securities pledged for Chase Bank and R. C. C. Notes.

(Clerk's Note: This Appendix 4 was part of the brief on exceptions of Insurance Group Committee Filed on October 8, 1941 before the Interstate Commerce Commission.)

[fol. 724] IN UNITED STATES DISTRICT COURT

STATEMENT OF ASSETS AND LIABILITIES OF DEBTOR AS OF CLOSE OF BUSINESS ON MAY 31, 1943, AND OF ITS REVENUES AND EXPENSES FOR THE MONTH OF MAY, 1943

Pursuant to Paragraph (6) of Order No. 1 entered herein on November 1, 1935, the undersigned Trustees of the Debtor, The Denver and Rio Grande Western Railroad Company, file herewith a statement of its assets and liabilities as of the close of business on May 31, 1943; and a statement of its revenue and expenses for the month of May, 1943; said statements being certified as correct by the [fol. 725] chief accounting officer of the Debtor.

Dated July 6, 1943.

Wilson McCarthy and Henry Swan, as Trustees of The Denver and Rio Grande Western Railroad Company, by Henry McAllister, Their Attorney.

[fol. 726]

The Denver and Rio Grande Western Railroad Company
(Wilson McCarthy and Henry Swan, Trustees)

General Balance Sheet Statement

As of May 31, 1943

Assets

	Book Assets Total	Company's Own Issues		
Investments:				
701 Road and Equipment Property			229,723,795 88	
702 Improvements on Leased Property			507,235 52	
702½B Donations and Grants			(Cr.) 1,963,049 00	
703½ Special Reserve Funds—Pennsylvania Company—Equipment			9,188 19	
704 Deposit in Lieu of Mortgage Property Sold			37,874 64	
705 Miscellaneous Physical Property			231,132 45	
706 Investments in Affiliated Companies—Pledged			14,416,907 16	
706 Investments in Affiliated Companies—Unpledged			2,049,377 56	
707 Other Investments			734 00	245,013,196 34

[fol. 727]

Current Assets:				
708 Cash			10,276,854 87	
709 Temporary Cash Investments			4,200,000 00	
711 Special Deposits			965,592 84	
714 Net Balance Receivable from Agents and Conductors			606,048 20	
715 Miscellaneous Accounts Receivable			5,003,727 74	
716 Material and Supplies			5,252,296 91	
718 Rents Receivable			112,800 00	
719 Other Current Assets			48,884 05	26,465,204 61
Deferred Assets:				
720 Working Fund Advances			5,375 80	
722 Other Deferred Assets			526,962 31	532,338 11
Unadjusted Debits:				
723 Rents and Insurance Premiums Paid in Advance			64,244 08	
727 Other Unadjusted Debits			5,982,761 13	6,047,005 21
728 Securities Issued or Assumed—Unpledged—Held by Company	12,400 00	12,400 00		
729 Securities Issued or Assumed—				
Pledged (Redeemed—Held by Trustee)	8,333,000 00	8,333,000 00		
Pledged (Held as Collateral)	13,331,000 00	13,331,000 00		
	21,664,000 00	21,664,000 00		
	21,676,400 00	21,676,000 00		
				278,057,744 27

[fol. 728]

Liabilities

	Book Liability	Portion Held by or for Company		
Stock:				
751 Capital Stock:				
Common	62,457,539 62		62,457,539 62	
Preferred	16,445,600 00	12,400 00	16,433,200 00	
752 Stock Liability for Conversion	12,400 00		12,400 00	
Total	78,915,539 62	12,400 00	78,903,139 62	
Long Term Debt:				
755 Funded Debt Unmatured	70,764,000 00	11,876,000 00	58,888,000 00	
755½ Debt in Default	62,783,000 00	1,455,000 00	61,328,000 00	
756½ Equipment Obligations	5,487,000 00		5,487,000 00	
757 Amounts Payable to Affiliated Companies	4,355,174 38		4,355,174 38	
Total	143,389,174 38	13,331,000 00	130,058,174 38	
Total Capital Liabilities	222,304,714 00	13,343,400 00	208,961,314 00	208,961,314 00

[fol. 729].

Current Liabilities:			
758 Loans and Bills Payable		3,485,000.00	
759 Traffic and Car-Service Balances—Cr.		1,723,701.71	
760 Audited Accounts and Wages Payable		3,356,645.12	
761 Miscellaneous Accounts Payable		934,159.96	
762 Interest Matured Unpaid		101,737.50	
764 Unmatured Interest Accrued		35,665.84	
766 Unmatured Rents Accrued		205,602.76	
767 Accrued Tax Liability		6,442,676.00	
768 Other Current Liabilities		124,833.89	16,410,022.78
Deferred Liabilities:			
769½ Interest in Default		48,480,542.40	
770 Other Deferred Liabilities		306,945.41	48,787,487.81
Unadjusted Credits:			
772 Premium on Funded Debt		11,320.02	
775½ Accrued Amortization of Defense Projects—Road		10,105.27	
776 Accrued Depreciation—Road and Equipment		16,054,699.69	
776½ Accrued Amortization of Defense Projects—Equipment		1,107,976.13	
778 Other Unadjusted Credits		758,704.70	17,942,805.81
Surplus:			
786 Earned Surplus		(Dr.) 14,043,886.13	
Total Surplus			(Dr.) 14,043,886.13
			278,057,744.27

Certified as correct this 6th day of July, 1943.

T. A. Thompson,
General Auditor.

16—278-282

The Denver and Rio Grande Western Railroad Company
(Wilson McCarthy and Henry Swan, Trustees)

Revenues and Expenses

(May, 1943)

Income Statement

	Month of May, 1943	Five Months
Railway Operating Income:		
Railway Operating Revenue:		
Transportation—Rail Line:		
101 Freight	4,990,724.90	22,969,022.80
102 Passenger	731,793.83	3,817,959.76
103 Baggage	760.99	3,182.59
105 Parlor and Chair Car	102.15	563.09
106 Mail	34,092.21	166,975.86
107 Express	78,719.92	273,424.21
108 Other Passenger—Train	1,072.00	5,202.72
109 Milk	3,884.61	19,114.33
110 Switching	27,392.76	145,290.53
Incidental:		
131 Dining and Buffet	78,809.50	398,421.83
132 Hotel and Restaurant	4,913.20	21,483.89
133 Station and Train Privileges	2,640.31	11,034.90
134 Parcel Room	229.30	1,137.80
135 Storage—Freight	79.40	1,921.43
136 Storage—Baggage	175.00	738.74
137 Demurrage	7,414.70	33,390.20
138 Telegraph and Telephone	292.50	1,241.15
142 Rents of Buildings and Other Property	1,982.75	8,373.66
143 Miscellaneous	6,538.24	28,524.98
Joint Facility:		
151 Joint Facility—Cr.	6,849.73	33,115.57
152 Joint Facility—Dr.	3,104.37	17,020.04
Total Railway Operating Revenues	5,975,363.63	27,918,100.00

[fol. 731]

Railway Operating Expenses:				
Maintenance of Way and Structures		470,523.07		2,074,064.84
Maintenance of Equipment		910,170.73		4,447,875.44
Traffic		89,455.29		461,438.27
Transportation—Rail Line		1,591,767.09		7,772,834.24
Miscellaneous Operations		54,549.64		290,880.68
General		110,360.03		529,149.76
Total Railway Operating Expenses		3,226,825.85		15,597,243.23
Net Revenue from Railway Operation		2,748,537.78		12,320,856.77
532 Railway Tax Accruals		1,028,601.93		4,534,300.30
Railway Operating Income		1,719,935.85		7,786,556.47
Rent Income:				
504 Rent from Locomotives		7,241.57		39,860.30
505 Rent from Passenger—Train Cars		3,747.46		16,599.04
507 Rent from Work Equipment		3,065.53		9,391.12
508 Joint Facility Rent Income		49,680.20		245,713.60
Total Rent Income		63,734.76		311,564.06
Rents Payable:				
536 Hire of Freight Cars—Debit Balance		82,535.60		397,947.66
537 Rent for Locomotives		28,809.91		188,966.33
538 Rent for Passenger—Train Cars		10,539.44		65,581.52
540 Rent for Work Equipment		4.90		624.68
541 Joint Facility Rents		77,327.15		390,853.90
Total Rents Payable		199,217.00		1,043,974.09
Net Rents	(Dr.)	135,482.24	(Dr.)	732,410.03
Net Railway Operating Income		1,584,453.61		7,054,146.44

[fol. 732]

Income Statement—Concluded

	Month of May, 1943	Five Months
Other Income:		
509 Income from Lease of Road and Equipment	48.46	660.18
510 Miscellaneous Rent Income	10,644.07	37,926.59
511 Miscellaneous Non-Operating Physical Property		140.00
512 Separately Operated Properties—Profit	610.39	2,081.04
514 Income from Funded Securities	975.34	79,059.62
515 Income from Unfunded Securities and Accounts		406.71
517 Release of Premiums on Funded Debt	176.84	889.08
519 Miscellaneous Income	275.00	797.20
Total Other Income	12,730.10	121,960.42
Total Income	1,597,183.71	7,176,106.86
Miscellaneous Deductions from Income:		
543 Miscellaneous Rents	41.67	210.35
551 Miscellaneous Income Charges	281.86	444.46
Total Miscellaneous Deductions	323.53	654.81
Income Available for Fixed Charges	1,596,860.18	7,175,452.05
Fixed Charges:		
542 Rent for Leased Roads and Equipment	9,392.20	46,695.08
546 Interest on Funded Debt:		
(a) Fixed Interest	472,968.45	2,361,221.11
547 Interest on Unfunded Debt	17,858.65	86,901.35
Total Fixed Charges	500,219.30	2,494,817.54
Net Income	1,096,640.88	4,680,634.51

[fol. 733]

Profit and Loss Statement

	Month of May, 1943		Five Months
Credits:			
602 Credit Balance Transferred from Income	1,096,640 88		4,680,634 51
607 Miscellaneous Credits	2,668 18	(Dr.)	26,841 51
	1,099,309 06		4,653,793 00
Debits:			
611 Debit Balance, January 1, 1943			18,676,769 27
621 Miscellaneous Debits	298 36		20,909 86
786 Earned Surplus May 31, 1943, carried to General Balance Sheet	1,099,010 70	(Dr.)	*14,043,886 13*
	1,099,309 06		4,653,793 00

Certified as correct this 6th day of July, 1943.

T. A. Thompson, General Auditor.

Filed United States District Court, Denver, Colorado—July 7, 1943. G. Walter Bowman, Clerk.

[fol. 734] PETITION OF CITY BANK FARMERS TRUST COMPANY, FILED BEFORE THE INTERSTATE COMMERCE COMMISSION ON AUGUST 21, 1942

The petitioner admits that the present excellent earnings are unprecedented and may not continue, and that they are perhaps in part the result of the extraordinary war traffic over the lines of the Debtor.

Filed United States District Court Denver, Colorado, Sep. 30, 1942. G. Walter Bowman, Clerk.

[fol. 735] BEFORE THE INTERSTATE COMMERCE COMMISSION

PETITION OF THE DEBTOR FOR A FURTHER HEARING HEREIN FOR THE INTRODUCTION OF EVIDENCE OF CHANGED ECONOMIC CONDITIONS REQUIRING A REDETERMINATION OF THE VALUE OF THE DEBTOR'S PROPERTIES FOR PURPOSES OF REORGANIZATION UNDER SECTION 77 OF THE NATIONAL BANKRUPTCY ACT

The Denver and Rio Grande Western Railroad Company, Debtor herein, pursuant to the provisions of Section 77 of the National Bankruptcy Act and in discharge of its duties and responsibilities as therein defined, respectfully presents this Petition to the Interstate Commerce Commission for the purposes herein set forth and for the reasons herein given:

The Debtor hereby moves the Interstate Commerce Commission to rehear the issues involved in the Plan of Reorganization promulgated and approved by the Interstate Commerce Commission July 13, 1942, to the end that this Commission may give full consideration to evidence as to the extent to which the Debtor's plant has been utilized as a transportation unit and a facility in interstate commerce since the last hearing held herein by this Commission, and evidence as to the volume and character of its traffic, its revenues, its income, its operating efficiency and the consequent demonstration of earning power developed since said last hearing and may give full consideration to operating economies and efficiencies growing out of recent advances in the art of transportation which it is now possible to [fol. 736] demonstrate as attributable to property improvements and new operating methods—a demonstration which

the volume of service makes possible on the basis of actualities without the necessity as heretofore of mere estimates and conjectures—and may give full consideration to the probabilities that other National needs for the Debtor's transportation facilities and service, different in kind but not in its effect upon the volume of business and value of the service, will follow the termination of the War to the end that the factor of the Debtor's potential earning power can be given true and proper weight in the fixing of the capitalization of the reorganized structure and the distribution of its securities to the various classes of its creditors and stockholders.

The Debtor, if afforded an opportunity so to do by this Commission, is prepared to show by evidence which it believes will prove to be of a most convincing character that since the close of the hearings in this Commission and on the basis of its earnings experience since the closing of the hearing in this Commission a greatly increased earning power has been developed, much of which is in no way connected with the War or the War economy and is so far of a permanent and durable nature that it could not properly be ignored in an appraisal of the Debtor's properties and earning power for the purposes of said Section 77 and that such permanent improvement in earning power will continue even though the War demands for its services be not followed by the equal demand resulting from greatly changed necessities of the transportation business of the Nation.

Respectfully submitted, The Denver and Rio Grande Western Railroad Company, by Michael J. Curry, Vice-President.

Dated, New York, N. Y., April 30, 1943.
F. C. Nicodemus, Jr., William V. Hodges, of Counsel.

[fols. 737-738] *Duly sworn to by Michael J. Curry. Jurat omitted in printing.*

Filed United States District Court, Denver, Colorado, Jul. 31, 1943. G. Walter Bowman, Clerk.

[fol. 739] At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 14th day of June, A. D. 1943.

Finance Docket No. 11002

DENVER & RIO GRANDE WESTERN RAILROAD COMPANY REORGANIZATION

ORDER

Upon consideration of the record in the above-entitled proceeding and the petition filed on May 1, 1943, by The Denver and Rio Grande Western Railroad Company, debtor, requesting that the proceeding be reopened for further hearing and the introduction of additional evidence pertaining to the economic conditions now existing and the prospective earnings of the new property, as they might affect the capitalization of the new company, the value of the property, and other elements of the plan of reorganization for the debtor under the provisions of section 77 of the Bankruptcy Act, as amended;

It appearing, That the petitioner has served copies of its petition upon all parties of record and no replies have been filed;

It further appearing, That petitions for modification of the plan of reorganization for the debtor, approved by report and order of this Commission dated July 13, 1942, have been filed and are pending; and

It further appearing, That additional evidence of the nature referred to in the debtor's petition filed on May 1, 1943, is not required for a determination of the mat- [fol. 740] ters involved in a further modification of the aforesaid plan of July 13, 1942;

It is ordered, That said petition be, and it is hereby, denied.

By the commission,

W. P. Bartel, Secretary. (Seal.)

Filed United States District Court, Denver, Colorado. June 28, 1943. G. Walter Bowman, Clerk.

[fol. 741] At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 6th day of September, A. D. 1943.

Finance Docket No. 11002

DENVER & RIO GRANDE WESTERN RAILROAD COMPANY
REORGANIZATION

ORDER

Upon consideration of the record in the above-entitled proceeding and the pleading entitled "Exceptions" and "Petition for reconsideration," filed on July 12, 1943, by The Denver and Rio Grande Western Railroad Company, debtor, demanding that the Commission rescind its third supplemental report dated June 14, 1943, further modifying and approving a plan of reorganization, and the orders made and filed therewith, that the Commission rescind its action of the same date denying the debtor's petition requesting that the proceedings be reopened for further hearing to permit the introduction of additional evidence, and that the Commission now set this proceeding down for further hearing; and

It appearing, That the petitioner has served copies of its petition upon all parties of record and no replies have been filed with the Commission; and

It further appearing, That the petitioner has not shown any reasons for the requested action other than those which were before the Commission for its consideration at the time of the issuance of the aforesaid report and orders of June 14, 1943:

It is ordered, That the debtor's above-described petition be, and it is hereby, denied.

By the Commission.

A true copy:

W. P. Bartel, Secretary of the Interstate Commerce Commission. (Seal.)

Filed United States District Court, Denver, Colorado; Sep. 22, 1943. G. Walter Bowman, Clerk.

[fol. 742] IN UNITED STATES DISTRICT COURT

OBJECTIONS OF THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, THE DEBTOR HEREIN, AND ITS SUBSIDIARY COMPANIES, TO THE PLAN OF REORGANIZATION CERTIFIED TO THE COURT BY THE INTERSTATE COMMERCE COMMISSION AS MODIFIED AND APPROVED BY ITS THIRD SUPPLEMENTAL REPORT AND ORDER DATED JUNE 14, 1943, AND STATEMENT OF THE DEBTOR'S CLAIM FOR EQUITABLE TREATMENT.

The Denver and Rio Grande Western Railroad Company, the Debtor herein, on its own behalf and on behalf of The Denver and Salt Lake Western Railroad Company and The Rio Grande Junction Railway Company (each of which last named companies unites herein) and (to the extent that it lawfully may) also on behalf of Goshen Valley Railroad Company and The Denver and Salt Lake Railway Company, of each of which it is the owner of not less than 91.78% of its outstanding capital stock, hereby objects to the Plan of Reorganization certified to this Court by the Interstate Commerce Commission, as modified and approved by its Third Supplemental Report and Order dated June 14, 1943 (hereinafter called "Reorganization Plan"), and in accordance with subsection (e) of Section 77 of the Act of Congress commonly known as the National Bankruptcy Act, and pursuant to order of this Court, No. 463, filed herein on July 2, 1943, the Debtor, for itself and for said subsidiary companies, hereby presents a statement in detail of its Objections to said Plan of Reorganization and its claim for equitable treatment.

Whenever herein reference is made to the Debtor or the [fol. 743] Debtor's property or the value thereof, such reference, unless the context shows otherwise, shall be deemed to include the property or the value of the property of the Debtor and its aforesaid subsidiary companies.

In limine the Debtor objects to any consideration by the District Court of the Plan of Reorganization certified as aforesaid to the Court by the Interstate Commerce Commission on the ground that the Commission's determination was made without a hearing of the character required by the Fifth Amendment to the Constitution of the United States and is in effect an attempt to take the Debtor's property without due process of law and without observing the

process as provided by Section 77 of the National Bankruptcy Act.

Specifically the Debtor excepts to and objects to a denial of the Debtor's petition filed with the Commission on May 1, 1943, a copy of which is hereto annexed and made a part hereof; and the Debtor hereby moves for an order by this Court referring this proceeding back to the Interstate Commerce Commission to receive evidence of the character outlined therein and for proceedings in accordance with the Statutes of the United States.

Subject to the aforesaid reservation of its constitutional rights and without a waiver thereof the Debtor states the following Objections to the Plan so certified to this Court by the Interstate Commerce Commission and the following claim for equitable treatment:

A. Objections to the Plan of Reorganization Certified to this Court by the Interstate Commerce Commission, as Modified and Approved by Its Third Supplemental Report and Order Dated June 14, 1943.

1. The Debtor renews all of its Objections to the Plan of Reorganization promulgated by the Interstate Commerce Commission on April 2, 1940, which Objections were filed with the District Court on July 1, 1940, except to the ex-
[fol. 744] tent that said Objections are given recognition by the Third Supplemental Report and Order of the Interstate Commerce Commission dated June 14, 1943, to which these Objections relate.

2. The Debtor specifically objects to the findings of the Commission as to the total capitalization of the reorganized Company and as to the value of the property of the Debtor and avers that the actual value is in excess of the total capitalization as found by the Commission in the Plan of Reorganization now certified to the District Court, and that such capitalization is less than the true value of the property protected by the Fifth Amendment.

3. In addition to the recognition due to the Preferred Stock and Common Stock of the Debtor without the payment of any consideration, the Debtor submits that holders of its Preferred Stock and Common Stock should be given a preferential right on terms to be fixed to redeem proportionately the collateral proposed to be placed by

the Commission's modified Plan under the extended collateral note held by The Chase National Bank of the City of New York and that purchase warrants representing such rights should be authorized.

4. The Debtor objects to the failure of the Commission to value the shares of the capital stock of Utah Fuel Company allotted to the holders of the First Consolidated Mortgage Bonds of the Rio Grande Western Railroad Company and its failure to deduct the value thereof from the claim which it has purported to satisfy by the allocation of new securities in the reorganized Company.

B. Claim of Debtor for Equitable Treatment.

In its claim for equitable treatment the Debtor asks that the Plan of the Interstate Commerce Commission certified to the District Court as aforesaid by the Commission's Third Supplemental Report be set aside and that a new [fol. 745] Plan be certified providing for a capitalization which will make whole all of the Debtor's creditors and will provide for allotments of stock in the reorganized Company to the Debtor for the use and benefit of its shareholders as their interests may appear; and that in addition warrants be issued to the holders of the Debtor's Preferred Stock and Common Stock entitling them in the order of their respective priorities to redeem proportionately all collateral underlying the proposed extended collateral note held by The Chase National Bank of the City of New York.

Dated, July 29, 1943.

Pierce & Greer, 40 Wall Street, New York, New York; Hodges, Vidal & Goree, Equitable Building, Denver, Colorado, Attorneys for the Debtor and its above-named subsidiary companies as Objectors.

Frank C. Nicodemus, Jr., William V. Hodges of Counsel.

Filed United States District Court, Denver, Colorado, Jul. 31, 1943. G. Walter Bowman, Clerk.

[fol. 746] IN UNITED STATES DISTRICT COURT

JOINT STATEMENT BY DEBTOR AND SUBSIDIARY DEBTOR OF THE POINTS UPON WHICH THEY, AS APPELLANTS, WILL RELY ON THEIR APPEALS FROM THE ORDER OF THE COURT ENTERED OCTOBER 25, 1943.

Now come the Debtors above named and jointly and severally file their Statement of Points on which they intend to rely on their appeal from the order of this Court entered October 25, 1943, approving the Plan of Reorganization of the Debtors' properties certified to this Court by the Interstate Commerce Commission and dated June 14, 1943.

Said Points are as follows:

Point No. 1

The Plan of Reorganization approved by the Court in its order of October 25, 1943, is not fair and equitable, does not afford due recognition to the rights of each or any class of creditors and stockholders, does discriminate unfairly in favor of classes of creditors holding senior liens and as against creditors junior thereto, and does discriminate unfairly against the Debtors and their stockholders, and does not conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders in the securities of the reorganized company, all contrary to Section 77, subsection (c) of the Bankruptcy Act. The Court erred in approving said Plan.

Point No. 2

On the 14th day of April, 1943, there was pending before the Interstate Commerce Commission a proceeding in this [fol. 747] cause for the formulation of a plan of reorganization under Section 77, and on said last mentioned date, while said matter was so there pending, the Debtors filed with said Commission a petition alleging that since the closing of testimony on hearings theretofore had before the Commission on the Plan there had become available proof of an earning experience of Debtors' property which had shown a greatly increased ear-ing power, permanent and durable, not provable by facts known at or prior to the closing of the said testimony, much of which was in no way

connected with the war or the war economy, showed a permanent improvement in earning power of all Debtors' properties; and the Debtors asked that an opportunity be given to present evidence thereof to the Commission and that the same be considered by the Commission in arriving at a Plan of Reorganization. The Commission erroneously denied to the Debtors the opportunity to make such proof and give testimony concerning the same and be heard thereon and certified its Plan to the Court on or about the 14th day of June 1943 without affording the Debtors an opportunity to be heard in the presentation of such facts or in arguments concerning the pertinency thereof, and thereby, in violation of the due process clause of the Constitution, denied to the Debtors a full, free and fair hearing in support of their claim for equitable recognition. The Court erred in approving said Plan and in not ordering it returned to the Commission for a hearing of said petition and further consideration.

Point No. 3

That the Commission had not before it any competent testimony to support its alleged finding of permissible capitalization for a reorganized company owning the Debtors' assets at any level of capitalization which could equitably result in the exclusion of the principal Debtor and its stockholders from participation in the securities of the [fol. 747-A] reorganized company, nor was there such testimony in the record certified by the Commission to the Court, nor was such testimony presented to the Court. The Court erred in approving the Plan which so excluded the Debtors and their stockholders without any competent testimony on which to base findings or conclusions justifying such exclusion.

Point No. 4

That the Commission's alleged findings of capitalizable value were unsupported by competent testimony, were based upon the Commission's own opinions not given in evidence or made subject to cross-examination. The Court erred in approving the Plan based on such alleged findings.

Point No. 5

That the Commission received and considered the report of its own Bureau of Valuation covering in detail the opinion

of that Bureau as to physical values of Debtors' operating properties, that said report was not competent proof of the matters set forth therein, and the Commission denied to the Debtors the right to cross examine the employees of the Commission who were the authors of such reports and refused to strike such reports from the record; that this action by the Commission was a denial of a substantial right to a full, free and fair hearing and violated the due process provisions of the Constitution. The Court erred in approving a Plan based on a record of hearings so conducted in violation of the Debtors' right to a full, free and fair hearing.

Point No. 6

That the findings of the Commission as to the prospective future earnings of the Debtors' property was based entirely on its own opinion as to such earnings, unsupported by any sworn testimony whatsoever as to the expert opinion of any witness as to such prospective earnings. The Court erred in approving the Plan which was predicated on findings of fact supported solely by the opinion of the Commission.

[fol. 748]

Point No. 7

The Plan failed to authorize capitalization for the reorganized company at not less than the minimum for which there was support in the evidence before the Commission. The Court erred in approving the Plan and in failing to return it to the Commission for further consideration.

Point No. 8

The Plan failed to authorize the capitalization of the reorganized company of at least two hundred million dollars, as shown by the only competent testimony before the Commission or the Court. The Court erred in approving a Plan with a lower capitalization.

Point No. 9

The Court erred in approving a plan with a total capitalization of not more than $155,173,127.00.

Point No. 10

Said Plan fails to give weight to increases in the Debtors' assets accumulated during the Court's administration, and the Court erred in approving the Plan.

Point No. 11

The Plan fails to give effect to improved operating economies resulting from the large expenditures for additions and betterments made by the Trustees of the Debtors' properties during the Court's administration and the newly developed traffic and improved traffic and earnings, opportunity to give testimony and be heard concerning which was rejected by the Commission. The Court erred in approving the Plan and in not returning it to the Commission for further consideration.

Point No. 12

The Court erred in not making an independent determination of the amount of each mortgage creditor's claim on account of which such creditor should be entitled to receive securities in a reorganized company, and in not determining what part of each claim is entitled to the priority as provided in its respective mortgage.

[fol. 749] Point No. 13

The Commission failed to determine the earnings during administration of the respective items of property constituting security for each mortgage issue and failed to properly account the same and distinguish in its treatment of claims between interest which would accrue during administration at contract rates to which such earnings should be credited, and the uniform non-contract equitable interest no so earned, the allowance to which is subject to the equitable discretion of the Court, and thereby, in the Plan, made unjust and inequitable allotment of the proposed new securities in violation of the law of the land governing the administration of bankrupt estates. The Court erred in approving the same.

Point No. 14

The Commission computed interest on all secured mortgage bonds at the legal rate of interest to the effective date of the Plan and by and through its allotment of new

securities in the Plan compounded the entire amount thereof, contrary to equity. The Court erred in approving the same.

Point No. 15

The Court erred in not requiring the distribution of new securities in accordance with the rules of bankruptcy administration and distribution.

Point No. 16

The Commission erred in increasing the claim of the Rio Grande Western First Trust 4s by adding to the amount of the principal and interest due on said claim on November 1, 1935, the date when petitions for reorganization herein were filed, the accumulated contract interest subsequent to such date and awarding to the holders of said bonds a priority over securities junior in time for the amount of such accumulated interest, thereby increasing the distributive share of the Debtors' estates to which the Rio Grande Western First Trust 4s became entitled on November 1, 1935, contrary to the equitable rule of distribution in bank-[fol. 750] ruptcy. The Court erred in approving the Plan providing for such enlarged priority.

Point No. 17

The Commission erred in increasing the claim of the Rio Grande Western Consolidated 4s by adding to the amount of principal and interest due on said claim on November 1, 1935, the date when petitions for reorganization herein were filed, the accumulated contract interest subsequent to such date and awarding to the holders of said bonds a priority over securities junior in time for the amount of such accumulated interest, thereby increasing the distributive share of the Debtors' estates to which the Rio Grande Western Consolidated 4s became entitled on November 1, 1935 contrary to the equitable rule of distribution in bankruptcy, and the Court erred in approving the Plan providing for such enlarged priority.

Point No. 18

The Commission erred in increasing the claim of the Denver and Rio Grande Consolidated 4s by adding to the amount of principal and interest due on said claim on November 1, 1935, the date when petitions for reorganiza-

tion herein were filed, the accumulated contract interest subsequent to such date and awarding to the holders of said bonds a priority over securities junior in time for the amount of such accumulated interest, thereby increasing the distributive share of the Debtors' estates to which the Denver and Rio Grande Consolidated 4s became entitled on November 1, 1935 contrary to the equitable rule of distribution in bankruptcy. The Court erred in approving the Plan providing for such enlarged priority.

Point No. 19

The Commission erred in increasing the claim of the Denver and Rio Grande Consolidated 4½s by adding to the amount of principal and interest due on said claim on November 1, 1935, the date when petitions for reorganization herein were filed, the accumulated contract interest subse-
[fol. 751] quent to such date and awarding to the holders of said bonds a priority over securities junior in time for the amount of such accumulated interest, thereby increasing the distributive share of the Debtors' estates to which the Denver and Rio Grande Consolidated 4½s became entitled on November 1, 1935 contrary to the equitable rule of distribution in bankruptcy. The Court erred in approving the Plan providing for such enlarged priority.

Point No. 20

The Commission erred in increasing the claim of the Refunding and Improvement 5s by adding to the amount of principal and interest due on said claim on November 1, 1935, the date when petitions for reorganization herein were filed, the accumulated contract interest subsequent to such date and awarding to the holders of said bonds a priority over securities junior in time for the amount of such accumulated interest, thereby increasing the distributive share of the Debtors' estates to which the Refunding and Improvement 5s became entitled on November 1, 1938 contrary to the equitable rule of distribution in bankruptcy. The Court erred in approving the Plan providing for such enlarged priority.

Point No. 21

The Commission erred in increasing the claim of the Refunding and Improvement 6s by adding to the amount of principal and interest due on said claim on November 1, 1935, the date when petitions for reorganization herein were

filed, the accumulated contract interest subsequent to such date and awarding to the holders of said bonds a priority over securities junior in time for the amount of such accumulated interest, thereby increasing the distributive share of the Debtors' estates to which the Refunding and Improvement 6s became entitled on November 1, 1935 contrary to the equitable rule of distribution in bankruptcy. The Court erred in approving the Plan providing for such enlarged priority.

[fol. 752] Point No. 22

The Commission erred in not allotting to the claim of the holders of the General Mortgage 5s securities in the reorganized company which, measured by capitalizable value of Debtors' properties properly determine, would compensate said holders in full for said claim. The Court erred in approving a Plan which did not so provide.

Point No. 23

The Court erred in approving a Plan which made an inequitable provision for the allotment to the holders of the General Mortgage 5s of a participation in the securities of the reorganized company.

Point No. 24

The Commission erred in not providing for the recognition of the Debtors in the reorganized company by an allotment of the voting stock of said company, and in not providing a voting stock for that purpose. The Court erred in approving a Plan which did not so provide.

Point No. 25

The Court and the Commission erred in not providing for the purchase by the Debtors of the stockholders of the principal Debtor of the voting stock of the reorganized company through the issue of warrants to the Debtor or its stockholders entitling them to purchase the same at a fair price and within a reasonable time as will appear to be justified after correction of the errors specified herein.

Point No. 26

The Commission allotted to the holders of Rio Grande Western Consolidated 4% bonds securities in the reor-

ganized company based on the full face amount of said bonds plus accrued interest to January 1, 1943, and allowed such bondholders to retain the stock of the Utah Fuel Company of substantial value pledged to secure their said bonds by owners other than the Debtors, without requiring that the value of the said Utah Fuel Company stock be credited on the claims of said bondholders, and limiting distribution of new securities in reorganization to said bondholders to the balance of said claim after such credit, contrary to [fol. 753] equity and the law of bankruptcy administration and distribution. The Court erred in approving said Plan and the proposed distribution of new securities to such bondholders.

Point No. 27

That the Plan as certified by the Commission provides for the allotment to the holders of Rio Grande Junction First Mortgage Bonds of approximately $2,400,000.00 of the proposed new First Mortgage Bonds, and $634,000.00 of the proposed new Income Bonds of the reorganized company; that subsequent to such certification the representatives of the holders of said bonds demanded the payment thereof as an operating obligation of the Court and the Court ordered the same purchased by the principal Debtor's Trustees and the purchase was made; that no equitable adjustment of new securities was made to give the creditors of the principal Debtor junior to said Rio Grande Junction First Mortgage Bonds securities in the reorganized company readjusted because of the elimination of the allotment to Rio Grande Junction First Mortgage Bonds proposed in said Plan. The Court erred in approving the Plan without requiring such redajustment to be made in accordance with procedures provided in Section 77.

Point No. 28

The Court erred in the recital and finding in its Order adopting the findings and the conclusion of the Commission as its own.

Point No. 29

The Court erred in approving a Plan which provides that the stock of the reorganized company, preferred and common, shall be par value stock, and in not providing for non par voting stock.

Point No. 30

The Court erred in approving a Plan which fails to recognize the duty of the principal Debtor under Section 77 to carry out the Plan.

[fol 754] Point No. 31

The Court erred in approving a Plan which provides for a reorganization committee and charges it with the duty of carrying out the Plan.

Point No. 32

The Commission exceeded the powers given it under Section 77 in attempting to limit the capitalization of the new company below the net investment of the principal Debtor in used and usable property. The Court erred in approving the action of the Commission in so doing.

Point No. 33

In the formulation of a Plan certified by the Commission to the Court and approved by the Court, the Commission exceeded the power and authority given it by Section 77 of the Bankruptcy Laws. The Court erred in approving a Plan so certified.

Point No. 34

That said Plan is, in effect, an order confiscating the property of the Debtors and each of them, purportedly in the interest of the public, without just compensation to the Debtors or either of them, and without due process of law, all in violation of the Fourth and Fourteenth Amendments to the Constitution of the United States. The Court erred in approving said Plan.

Point No. 35

By said Plan the Commission exercised powers and authorities not vested in it by the Constitution and laws of the United States and usurped powers not given it by Congress by virtue of Section 77 of the Bankruptcy Act or any other statute, all to the injury of the Debtors and each of them. The Court erred in approving the Plan.

Point No. 36

In and by said Plan the Commission wholly ignored the terms of each and every mortgage indenture securing the

principal Debtor's mortgage indebtedness and the statutes of the State of Colorado applicable thereto, and provided [fol. 755] a forfeiture of the interest of the Debtors and each of them in the assets in the hands of the Court without a full, fair, free and lawful sale in open market as provided by said indentures and the law of the land applicable thereto. The Court erred in approving said Plan.

Point No. 37

The Court erred in denying Debtors' motion for an order on the Trustees to pay the expense of certifying record herein to the Court of Appeals of the cost of printing such record in the Court of Appeals out of funds in the hands of the Trustees in this proceeding.

Point No. 38

The Commission erred in holding a hearing on the Plan on the 20th day of May, 1941, contrary to the provisions of Section 77 and in advance of the time allowed by said statute within which the Debtors were entitled to submit a new Plan after disapproval by the Court of the Commission's first Plan, and thereby denied to the Debtors the due process provided by Section 77. The Court erred in approving the final Plan predicated on such a hearing.

Point No. 39

The Court erred in denying the principal Debtor's motion to dismiss the proceeding and return the Debtor's property to it.

Dated January 15, 1944.

Wm. V. Hodges, 947 Equitable Bldg., Denver, Colorado; P. C. Nicodemus, Jr., 40 Wall Street, New York, N. Y., Attorneys for Debtors.

Hodges, Vidal & Gorsuch, 947 Equitable Bldg., Denver, Colorado; Pierce & Greer, 40 Wall St., New York, N. Y., of Counsel.

Filed United States District Court, Denver, Colorado, Jan. 17, 1944. G. Walter Bowman.

[fol. 756] In United States District Court

Order No. 478

Findings, Order and Decree

This matter having come on to be heard on the 13th day of April, A. D. 1943, upon notice to all parties, upon the Petition of the Trustee of The Denver and Salt Lake Western Railroad Company (herein called the Salt Lake Western) for Payment of Rental and other Amounts by The Denver and Rio Grande Western Railroad Company (herein called the Rio Grande), filed March 25, 1936, as amended April 27, 1936, and upon the "Supplemental Petition for Payment of Rental for Denver and Salt Lake Western Railroad Company Properties," filed February 8, 1943, and The Moffat Tunnel Improvement District having filed its Petition in Support of Petitions of the Trustee of the Salt Lake Western, and the State of Colorado having been allowed to intervene specially for the purpose of filing its answer herein, and various other parties having filed their answers herein, and the Court having heard the testimony offered in support of or opposition to the said petitions and answers, and having heard the arguments of counsel, and having taken under consideration certain questions respecting the obligations of the Debtor Rio Grande to the Salt Lake Western, for payments of [fol. 757] rental for the use of the Dotsero Cut-off; and now being fully advised in the premises, Doth Find:

1. That the operations of the Rio Grande over the lines of The Denver and Salt Lake Railway Company between Utah Junction and Bond, and over the line of the Salt Lake Western (known as the Dotsero Cut-off) between Bond and Dotsero, by the Trustees of the Rio Grande, in accordance with the terms and provisions of the Joint Trackage Agreement dated October 15, 1928, between The Denver and Salt Lake Railway Company and the Rio Grande, and the Dotsero Cut-off Agreement, dated June 22, 1931, between The Denver and Salt Lake Railway Company, the Salt Lake Western, and the Rio Grande, as supplemented by a certain other agreement dated December 28, 1932, evidencing a loan of $3,631,000 by Reconstruction Finance Corporation to the Rio Grande to construct the Dotsero Cut-off, modifying and fixing as provided therein, annual rental for the use of the properties of the Salt

Lake Western by the Rio Grande at five per cent (5%) per annum on the principal sum of $3,631,000, have been and are (in view of the provisions of the succeeding finding 3) compatible with the public interest and for the benefit and advantage of the estate of the debtor, and said contracts should be ratified, approved and affirmed.

2. That subject to the next succeeding finding 3, the payments required and the performance of the other obligations by the Rio Grande under the said Joint Trackage Agreement dated October 15, 1928, and in the said Dotsero Cut-off Agreement dated June 22, 1931, as supplemented and modified by the said agreement dated December 28, 1932, do not constitute an undue or unreasonable burden upon the estate of the debtor.

3. That the aforesaid Dotsero Cut-off agreement dated June 22, 1931, as supplemented and modified by the agreement dated December 28, 1932, or the so-called stock purchase loan agreement of December 19, 1934, between Reconstruction Finance Corporation, the Salt Lake Western, and [fol. 758] the Rio Grande do not obligate the Rio Grande or its Trustees, to pay as rental for use of the Dotsero Cut-off either (a) the interest or principal obligations of the Salt Lake Western, or the Rio Grande, under said stock purchase loan agreement of December 19, 1934, or the notes issued thereunder, or (b) the federal or state income taxes, excess profits taxes, or other taxes based upon income, of the Salt Lake Western.

4. That to and including December 31, 1942, there is due and owing as an administrative claim from the Rio Grande and its Trustees to the Trustee of the Salt Lake Western, accrued and unpaid rental for the use of the properties of the Salt Lake Western by the Rio Grande and its Trustees, at the rate above specified, $1,352,589.75, without interest, according to the terms and provisions of the said Dotsero Cut-off Agreement dated June 22, 1931, as supplemented and modified by the said agreement dated December 28, 1932.

Wherefore, It Is Ordered and Decreed:

1. That the Joint Trackage Agreement between The Denver and Salt Lake Railway Company and the Rio Grande, dated October 15, 1928, and the Dotsero Cut-off Agreement between The Denver and Salt Lake Railway Company, the

Salt Lake Western, and the Rio Grande, dated June 22, 1931, as modified by a subsequent agreement between the Rio Grande and Reconstruction Finance Corporation, fixing as therein provided, the rental at five per cent (5%) per annum on $3,631,000, be ratified, approved and affirmed according to their terms.

2. That pursuant to the aforesaid finding 3, the Rio Grande or its Trustees are not obligated to pay to the Salt Lake Western as rental for use of the Dotsero Cut-off either (a) the interest or principal obligations of the Salt Lake Western, or the Rio Grande, under said stock purchase loan agreement of December 19, 1934, or the notes issued thereunder, or (b) the federal or state income taxes, excess profits taxes, or other taxes based upon income, of the Salt Lake Western.

3. That the Trustees of the debtor Rio Grande shall per- [fol. 759] form and continue to perform the obligations of the Rio Grande contained in said agreements, according to their terms as modified and as herein determined, and shall pay forthwith to the Trustee of the Salt Lake Western the sum of $1,352,589.75, without interest, as the full amount of rental for the use and operation of the properties of the Salt Lake Western by the Rio Grande or its Trustees, through December 31, 1942, and that in the future, until further order of the court, the Trustees of the Rio Grande shall pay to H. Allyn Hicks, Jr. as Trustee of the Salt Lake Western, as rental for the use of its properties, such amounts, when due, as are provided in the said Dotsero Cut-off Agreement, according to its terms, as supplemented and modified by the said agreement dated December 28, 1932, said rental being at the rate of five per cent (5%) per annum on the principal sum of $3,631,000, such sums so paid to be held by the said Trustee of the Salt Lake Western, for such disposition as may later be ordered by the court.

Dated at Denver, Colorado, this 13 day of Sept., A. D. 1943.

By the Court:

J. Foster Symes, Judge.

Filed United States District Court, Denver, Colorado, Sep. 13, 1943. G. Walter Bowman.

Entered on the docket September 13, 1943.

[fol. 760] IN UNITED STATES DISTRICT COURT

ORDER

On Petition of Insurance Group Committee, Certain Indenture Trustees, and Reconstruction Finance Corporation for Payment of Interest

The petition of

Insurance Group Committee, representing certain Institutional Owners of certain Rio Grande Western Railway Company First Trust 4's due 1939 (the bonds of such issue being hereinafter sometimes called the Trusts), Denver & Rio Grande Railroad Company Consolidated 4's and 4½'s due 1936 (the bonds of such issue being hereinafter sometimes called the Eastern Consols), Rio Grande Western Railroad Company Consolidated 4's due 1949 (the bonds of such issue being hereinafter sometimes called the Western Consols),

Central Hanover Bank and Trust Company, as Trustee for the Trusts,

United States Trust Company, of New York, as Trustee for the Eastern Consols,

Guaranty Trust Company of New York, as Trustee for the Western Consols,

The Chase National Bank of the City of New York, as Trustee for the Debtor's Refunding and Improvement Mortgage 5's due 1978 and 6's due 1974 (the bonds of such issues being hereinafter sometimes called the R & I's), and

Reconstruction Finance Corporation (hereinafter sometimes called RFC)

requesting that the Debtor's Trustees be authorized to make [fol. 761] an immediate payment of overdue interest on the above bonds outstanding or held in pledge having been considered by the Court, and the Court having heard testimony in that regard and being fully advised in the premises,

It is ordered:

1. That the Debtor's Trustees be, and they hereby are, authorized and directed to pay, at a date, as soon as reasonably feasible, to be determined by such Trustees, the aggregate amount of $2,398,679.11 on the following bonds in the following respective amounts as payments of or on account of the following respective instalments of interest:

(a) $54.55 on each $1000 bond of the Trusts outstanding or pledged to be applied to the payment in full of interest

thereon for the year 1943 at the rate of 4% per annum and on account for the interest thereon for the year 1942;

(b) $22.53 on each $1000 4% bond of the Eastern Consols outstanding or pledged to be applied to payment on account of interest thereon for the year 1943;

(c) $23.24 on each $1000 4½% bond of the Eastern Consols, outstanding or pledged to be applied to payment on account of interest thereon for the year 1943;

(d) $11.97 on each $1000 bond of the Western Consols outstanding or pledged, to be applied to payment on account of the instalment of interest due October 1, 1943;

(e) $17.18 on each $1000 5% bond of the R & I's outstanding or pledged, to be applied to payment on account [fol. 762] of the instalment of interest due October 1, 1943;

(f) $18.10 on each $1000 6% bond of the R & I's outstanding or pledged to be applied to payment on account of the instalment of interest due October 1, 1943;

2. That upon the consummation of any plan of reorganization in these proceedings with an effective date earlier than January 1, 1944, the total amounts of interest by this Order directed to be paid in respect of issues of existing securities shall, subject to further order of this Court, be credited against the unpaid fixed interest and contingent interest accrued or to accrue for the year 1943 upon the new securities to be issued under such plan in exchange for such respective issues of existing securities, the Court reserving, however, full power to direct other treatment of such payment in any case where the foregoing provision shall not be appropriate.

3. That each of the payments provided for in paragraph 1 of this Order shall be made only at such office or offices as the Debtor's Trustees may designate in the City of New York, New York, and at the office of the Debtor's Trustees in the City of Denver, Colorado, upon presentation of the bonds of the respective issues to be stamped with a legend substantially as follows:

> $—— has been paid on this bond pursuant to Order No. — of the United States District Court for the District of Colorado in proceedings entitled 'In the

Matter of The Denver & Rio Grande Western Railroad Company, Debtor' No. 8669, in payment of

If and when any plan of reorganization with an effective date earlier than January 1, 1944 shall be consummated in said proceedings, such payment shall, subject to further order of said Court, be credited against the fixed interest, prior contingent interest and con-[fol. 763] tingent interest accrued or to accrue in respect of the year 1943 upon the securities which may be exchanged for this bond under such plan."

4. That coupon bonds of the Western Consols presented for payment as herein provided shall have the coupons due April 1, 1935, and all subsequent coupons attached, and coupon bonds of the R&I's presented for payment as herein provided shall have the coupons due April 1, 1935, and all subsequent coupons attached.

5. That the Debtor's Trustees be, and they hereby are, authorized and directed to return the bonds presented to them for payment pursuant hereto, stamped with the appropriate legend referred to in Paragraph 3 hereof, to the person or persons entitled to receive the same.

6. That the interest paid as herein provided on pledged bonds be applied by the pledgees thereof to the latest instalments of interest due in respect of periods prior to January 1, 1944 on the obligations of the Debtor secured by such pledge.

7. That no interest upon overdue interest paid pursuant hereto shall be paid and that acceptance of any payment of interest authorized or directed by this Order by any person authorized or entitled to receive such payment shall constitute a waiver of interest upon the interest so paid.

8. That, if any payments made in accordance with the terms of this Order prove to be in excess of the amounts properly payable, appropriate adjustment shall hereafter be made with regard thereto in such manner as the Court [fol. 764] shall deem equitable; and if any payments made in accordance with the terms of this Order prove to be less than the amounts properly payable, supplemental payments shall be made with regard thereto in such manner as the Court shall deem equitable; and the Court reserves full jurisdiction to make such readjustments; the present Order

of distribution not being designed to constitute an adjudication of relative rights.

9. That the application of all sums authorized to be paid by this Order to the respective instalments of interest specified in this Order shall not be construed in any wise as a release or waiver of the respective claims for unpaid interest due prior thereto.

10. That the Debtor's Trustees be, and they hereby are, authorized and directed to place the above sums in separate accounts for the purposes of this Order only, to take such other action as may be necessary or appropriate to carry out its provisions and to pay the normal United States Income Tax, if any, on the respective portions of said interest instalments to the extent provided by the terms of the respective mortgages.

11. That no security holder or other party to these proceedings shall be prejudiced by this Order in respect of any questions material to the formulation of a plan of reorganization or the approval or confirmation thereof.

J. Foster Symes, District Judge.

Dated April 27th, 1944.

Filed United States District Court, Denver, Colorado Apr 27 1944—G. Walter Bowman, Clerk.

Entered on the Docket April 27, 1944.

[fol. 765]. In United States District Court

Petition of City Bank Farmers Trust Company, as Trustee of the General Mortgage, for Construction of the Plan and for Other Relief, and Supporting Memorandum.

City Bank Farmers Trust Company, as trustee under the General Mortgage dated February 1, 1924, of The Denver and Rio Grande Western Railroad Company, respectfully alleges as follows:

1. The Interstate Commerce Commission's Third Supplemental Report and Order (hereinafter called the "ICC Report"), dated as of June 14, 1943, sets forth a modified

reorganization plan (hereinafter called the "Plan") for the Debtor.

2. The Plan provides for a capitaliaztion of the reorganized corporation of $155,173,127.*

[fol. 766] 3. The effective date of the Plan is January 1, 1943. The ICC Report and the Plan are based on figures as of that date.

4. The authorized capitalization includes $4,354,816 of new common stock to provide a 10% distribution on the claim of the General Mortgage Bondholders, which, as of January 1, 1943, aggregated $43,548,155.

5. The authorized capitalization as set forth in the ICC Report included $2,123,918 of new First Mortgage Bonds and $634,417 of new Income Mortgage Bonds to provide a 100% distribution on the claim of the Rio Grande Junction Bonds (hereinafter called the "Junction Bonds"), which, as of January 1, 1943, aggregated $2,758,333. Thus, approximately 2¾ millions of new senior securities were to be used under the Plan to satisfy the claim of the Junction Bondholders.

6. Upon information and belief, the payment or purchase of the Junction Bonds pursuant to the order of this Court did not deplete the Debtor's cash, current assets or excess of current assets over current liabilities to a point below that which existed as of January 1, 1943.

7. The ICC Report provides (at page 24 of the mimeographed order):

> "The construction of the plan by the court shall be final and conclusive. The court may cure any defect, supply any omission, or reconcile any inconsistency, in such manner or to such extent as may be necessary or expedient to carry out the plan effectively."

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* For convenience, the figures used are those provided on the basis of consolidation of the Debtor with the Denver & Salt Lake. Either or both sets of figures could, of course, be used equally well.

The ICC Report further provides (at page 19 of the mimeographed order):

> "In view of possible changes in the amounts of the obligations herein shown as outstanding, the [fol. 767] reorganization committee shall be authorized, in order to give effect to such changes, to make such adjustments in the claims provided for in the plan, and such changes in allotment of securities, consistent with the provisions of the plan, as may be approved by the court."

8. Pursuant to the provisions of the ICC Report this Court may, either acting alone or with the reorganization committee, make such changes in the allotment of securities, consistent with the provision of the Plan, as may be equitable in the light of material changes occurring since the Plan came forward including changes in the amount of the Debtor's obligations outstanding as a result of the payment or purchase of the Junction Bonds.

9. In the event this Court should conclude that it does not possess the power, either acting alone or with the reorganization committee, to make such changes, this Court should refer the matter to the Interstate Commerce Commission for a supplemental report and order.

10. Unless approximately 2¾ millions of securities (in addition to the $4,354,816 of new common stock presently allotted to the General Mortgage issue) are allotted to the holders of the General Mortgage Bonds, the Plan will fail to conform in one of its vital details to the Plan as certified by the Commission.

11. It is necessary that this Court should interpret the Plan, as affected by the purchase or payment of the Junction Bonds, and determine what revised disposition should be made of the $155,173,127 authorized capitalization in the light of the material changes occurring since the Plan came forward.

[fol. 768] Wherefore the General Mortgage Trustee respectfully prays:

That this Court enter its order

(A) interpreting the Plan, as affected by the purchase or payment of the Junction Bonds, and providing for the

allocation to the General Mortgage issue of additional securities approximately equal in principal or par amount to the principal amount of the securities which are included within the approved capitalization and which should, as a result, be otherwise distributed, or

(B) directing the reorganization committee to make such changes in the allotment of securities, consistent with the provisions of the Plan, as may be equitable in the light of material changes occurring since the Plan came forward including changes in the amount of the Debtor's obligations outstanding as a result of the payment or purchase of the Junction Bonds and further directing the reorganization committee to allocate to the General Mortgage issue additional securities approximately equal in principal or par amount to the principal amount of the securities which are included within the approved capitalization and no longer required for distribution to holders of the Junction Bonds, or

(C) providing appropriate opportunity for suitable liaison between this Court and the Commission and permitting the Commission to file a supplemental report and order specifying what disposition should be made of the 2¾ millions unused balance of authorized capitalization, in the light of the material changes occurring since the Plan came forward; and

[fols. 769-770] That the General Mortgage Trustee have such other and further relief as to this Court seems appropriate.

March 28, 1944.

City Bank Farmers Trust Company, as Trustee of the General Mortgage, by Stewart C. Pratt, Vice President; Mitchell, Capron, Marsh, Angulo & Cooney, 20 Exchange Place, New York 5, N. Y.; Dines, Dines & Holme, First National Bank Building, Denver 2, Colorado, Attorneys for City Bank Farmers Trust Company, as trustee.

Edward E. Watts, Jr., Peter Hagner Holme, Milton J. Keegan, *Of Counsel.*

Filed, United States District Court, Denver, Colorado, Mar. 31, 1944—G. Walter Bowman, Clerk.

[fol. 771] IN UNITED STATES DISTRICT COURT

ANSWER OF INSURANCE GROUP COMMITTEE, CENTRAL HANOVER BANK AND TRUST COMPANY, TRUSTEE, UNITED STATES TRUST COMPANY OF NEW YORK, TRUSTEE, GUARANTY TRUST COMPANY OF NEW YORK, TRUSTEE, THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, TRUSTEE, AND RECONSTRUCTION FINANCE CORPORATION TO PETITION OF GENERAL MORTGAGE TRUSTEE FOR CONSTRUCTION OF THE PLAN AND FOR OTHER RELIEF.

Come now Reconstruction Finance Corporation, Insurance Group Committee, Central Hanover Bank and Trust Company, as Trustee under the First Trust Mortgage of Rio Grande Western Railway Company, United States Trust Company of New York, as Trustee under the Consolidated Mortgage of Denver and Rio Grande Railroad Company, Guaranty Trust Company of New York, as Trustee under the Consolidated Mortgage of Rio Grande Western Railway Company and The Chase National Bank of the City of New York as Trustee under the Refunding and Improvement Mortgage of The Denver and Rio Grande Western Railroad Company, all of which are intervenors herein (sometimes hereinafter referred to severally as the undersigned), and for their respective answers to the petition dated March 28, 1944 of City Bank Farmers Trust Company, as Trustee of the Debtor's General Mortgage, for construction of the Plan and for other relief, respectfully allege as follows:

1. The undersigned admit the allegations contained in paragraph 1.

2. The undersigned deny that the Plan provides for a capitalization of the reorganized corporation of $155,173,127 in all events.

3. The undersigned admit the allegations contained in paragraphs 3, 4 and 5, except that the principal amount of new First Mortgage Bonds provided for in the ICC Report is $2,123,916 and not $2,123,918 as alleged in said petition.

4. The undersigned deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 6 of said petition.

[fol. 772] 5. The undersigned admit the allegations contained in paragraph 7 of said petition.

6. As to the allegations contained in paragraphs 8-11, inclusive, of said petition, the undersigned allege that the same represent conclusions of law and do not constitute material allegations of fact, but in so far as the same are or may be considered as material allegations of fact, the undersigned deny the allegations contained in said paragraphs 8-11, inclusive, of said petition.

And as and for a further answer to said petition the undersigned respectfully allege as follows:

7. The plan of reorganization for the Debtor herein heretofore approved and certified to this Court by the Interstate Commerce Commission was approved by this Court by its Order dated October 25, 1943. No appeal was taken from said Order by City Bank Farmers Trust Company, as Trustee of the Debtor's General Mortgage, although the time for taking such appeal has long since elapsed.

And as and for a further answer to said petition the undersigned respectfully allege as follows:

8. On or about November 24, 1943 notices of appeal from said Order of this Court dated October 25, 1943 were filed by counsel for The Denver and Rio Grande Western Railroad Company, Debtor, and for The Denver and Salt Lake Western Railroad Company, Debtor. A statement of points on appeal and a designation of the contents of the record on appeal have been filed by said appellants, a counter-designation of contents of the record on appeal has been filed by certain of the undersigned, and the record on appeal has now been prepared by the clerk of this Court and certified to the Circuit Court of Appeals where said proceedings are now pending. The undersigned are informed and believe, and therefore allege, that this Court is without jurisdiction to consider or pass upon the matters and things referred to in said petition during the pendency of said appeals, and that in the event such jurisdiction [fol. 773] may exist this Court in its discretion should decline to consider or pass upon such matters and things during the pendency of said appeals.

And as and for a further answer to said petition the undersigned respectfully allege as follows:

9. On or about March 23, 1944 the Interstate Commerce Commission entered an order, to the full text of which the undersigned ask permission to refer on hearing with the same effect as if incorporated herein, providing for the submission of the Plan for acceptance or rejection by the creditors affected thereby, and the Plan has now been submitted to such creditors for acceptance or rejection, but said order provided that the Plan should not be submitted to the holders of The Rio Grande Junction Railway Company Bonds, and, on information and belief, the Plan has not been submitted to such holders. Under said order ballots returned to the Commission are to be postmarked not later than June 10, 1944, and it is anticipated that the Commission will certify the result of said submission to this Court at an early date.

Wherefore, the undersigned respectfully pray

(a) that said petition be dismissed on the ground that this court is without jurisdiction to consider or pass upon the same at this time,

(b) that, if considered on its merits, said petition be denied, and

(c) that the undersigned may have such other and further relief as to this Court may seem just and proper.

Respectfully submitted, Insurance Group Committee, by Hunton, Williams, Anderson, Gay & Moore, Grant, Shafroth & Toll, Their Attorneys; Central [fol. 774] Hanover Bank and Trust Company Trustee, Rio Grande Western Railroad Company First Trust 4's due 1939, by Rathbone, Perry, Kelly & Drye, Norma L. Comstock, Its Attorneys; United States Trust Company of New York, Trustee, Denver and Rio Grande Railroad Company, Consolidated 4's and 4½'s due 1936, by Stewart & Shearer, Langdon H. Larwill, Its Attorneys; Guaranty Trust Company of New York, Trustee, Rio Grande Western Railroad Company Consolidated 4's due 1949, by Davis, Polk, Wardwell, Sunderland

& Kiendl, Pershing, Bosworth, Dick & Dawson, Its Attorneys; The Chase National Bank of the City of New York, Trustee, Denver and Rio Grande Western Railroad Company Refunding and Improvement 5's due 1978 and 6's due 1974, by Milbank, Tweed & Hope, Lewis & Grant, Its Attorneys; Reconstruction Finance Corporation, by James L. Homire, Emmet McCaffery, James A. Marsh, Its Attorneys.

Filed United States District Court, Denver, Colorado, Aug. 30, 1944—G. Walter Bowman, Clerk.

[fol. 775] IN UNITED STATES DISTRICT COURT

OBJECTIONS OF CITY BANK FARMERS TRUST COMPANY, AS TRUSTEE OF THE GENERAL MORTGAGE, TO CONFIRMATION OF PLAN OF REORGANIZATION APPROVED BY COURT'S ORDER NO. 495.

City Bank Farmers Trust Company, as Trustee under the General Mortgage, dated February 1, 1920, of The Denver and Rio Grande Western Railroad Company, asserts that the plan of reorganization (herein called the "Plan"), approved by Order No. 495 of this Court, entered on or about October 25, 1943, should not be confirmed by this Court for the reasons hereinafter set forth. It further asserts that the burden of proof rests upon any party or parties who desire that this Court should confirm the Plan, notwithstanding the adverse vote of 79.33% of the holders of the General Mortgage Bonds, to establish to the satisfaction of this Court (a) that the Plan makes adequate provision for fair and equitable treatment for the interests or claims of the holders of the General Mortgage Bonds; (b) that such rejection was not reasonably justified in the light of the respective rights and interests of those rejecting the Plan and all the relevant facts; and (c) that the Plan conforms to the requirements of clauses (1) to (3), inclusive, of the first paragraph of subsection (c) of Section 77 of the Bankruptcy Act.

Without waiving its position with respect to the incidence of the burden of proof, it files these objections to the con-
[fol. 776] firmation of the Plan:

1. The Plan fails to make adequate provision for fair and equitable treatment for the interests and claims of the holders of the General Mortgage Bonds.

2. The rejection of the Plan by 79.33% of the holders of the Debtor's General Mortgage Bonds voting on the Plan was reasonably justified in the light of the respective rights and interests of the holders of the General Mortgage Bonds and all the relevant facts.

3. The Plan fails to conform to the requirements of clause (1) of the first paragraph of subsection (e) of Section 77 of the Bankruptcy Act.

4. The Plan is not fair and equitable to the holders of the General Mortgage Bonds, does not afford due recognition to their rights, discriminates unfairly against them and in favor of other classes of creditors and does not conform to the requirements of the law of the land regarding the participation of the various classes of creditors.

5. As a result of the purchase by the Debtor's Trustees, pursuant to the order of this Court, of the outstanding First Mortgage 5% Bonds (hereinafter called the "Junction Bonds") due on December 1, 1939, of The Rio Grande Junction Railway Company, an adjustment or change in allotment of securities, consistent with the provisions of the Plan, is required by the provisions of the Plan itself and by all applicable principles of law and equity. Before the Plan may be confirmed, provision should be made for redistribution of the authorized securities of the reorganized Debtor released through such purchase of the Junction Bonds, i. e., there should be made an adjustment or change in allotment of securities, consistent with the provisions of the Plan, to give effect to the changes which [fol. 777] have occurred in the amount of the obligations in the Plan shown as outstanding.

6. As a result of the accumulation of surplus cash in the hands of the Debtor's Trustees since the date of the promulgation of the Plan by the Commission, an adjustment or change in allotment of securities, consistent with the provisions of the Plan, is required by the provisions of the Plan itself and by all applicable principles of law and equity. Part or all of such surplus cash so accumulated should be used to reduce the amount of unpaid interest

accrued on the Debtor's securities senior to the General Mortgage Bonds, thus reducing the total amount of the claims outstanding having priority over the General Mortgage Bonds. Before the Plan may be confirmed, provision should be made for redistribution of the authorized securities of the reorganized Debtor released through such payment of accrued interest.

7. Unless provision is made for redistribution, as herein prayed, of securities authorized in the Plan released through purchase of the Junction Bonds and through the payments which should be made of accrued interest on the Debtor's securities senior to the General Mortgage Bonds, the Plan is not fair and equitable to the holders of the General Mortgage Bonds, does not afford due recognition to their rights, discriminates unfairly against them and in favor of other classes of creditors and does not conform to the requirements of the law of the land regarding the participation of the various classes of creditors.

8. Unless such provision is made for redistribution of the securities released through such purchase of the Junction Bonds the Plan will wrongfully result in a reduction in the capital structure of the reorganized Debtor to an amount substantially less than the Commission found to be proper.

[fol. 778] 9. The Plan fails to give the holders of the General Mortgage Bonds adequate or, in fact, any benefit from the surplus cash in the hands of the Debtor's Trustees on the effective date of the Plan.

10. The Plan provides for a substantial and inequitable reduction in the treatment of the holders of the General Mortgage Bonds from that provided for such holders in earlier plans, which inequitable reduction apparently results from the accumulation during the reorganization period of interest on claims senior to that of the holders of the General Mortgage Bonds, notwithstanding the fact that a substantial part or all of such interest on such senior claims was earned.

11. The Plan fails to give the holders of the General Mortgage Bonds adequate or, in fact, any benefit from

the Debtor's net income available for interest, from the expenditures made by the Debtor's Trustees in improving the property and from the substantial improvement in the Debtor's cash and current assets during the reorganization period.

12. The Plan fails to authorize the maximum capitalization justified for the reorganized Debtor.

City Bank Farmers Trust Company, as trustee as aforesaid, further alleges:

I. The Plan has been accepted by 20.67% of the holders of the General Mortgage Bonds voting and has been rejected by the holders of 79.33% of such holders.

II. The holders of General Mortgage Bonds who voted to accept the Plan constitute approximately 4.47% of the total amount of General Mortgage Bonds outstanding.

III. Upon information and belief no plan of reorganization for any railroad under Section 77 of the Bankruptcy Act has been confirmed or should be confirmed in the face of an adverse vote by a majority of those voting of the [fol. 779] creditors of any class entitled to vote upon such plan.

IV. Upon information and belief no statute has been held constitutional or should be held constitutional which by its terms requires a secured creditor of any class to surrender or exchange his claim and the security therefor and to accept something else in lieu thereof, over his objection, without at least the affirmative approval of a majority in amount of claim of creditors of such class.

V. Upon information and belief subsection (c) of Section 77 of the Bankruptcy Act should, if possible, be interpreted in such a way as will permit its being sustained as not repugnant to any constitutional principle or provision; if said subsection should be construed as permitting the confirmation of a plan of reorganization in the face of an adverse vote by a majority of those voting of any class of creditors entitled to vote on such plan, then such subsection should be declared unconstitutional and to provide for the taking of property without due process of law.

Wherefore, City Bank Farmers Trust Company, as Trustee as aforesaid, respectfully prays:

A. That the Plan be not confirmed.

B. That this Court enter an order, pursuant to Section 77(e) of the Bankruptcy Act, referring the case back to the Commission for further proceedings, including the consideration of modifications of the Plan or the proposal of new plans.

C. That in no event shall the Plan be confirmed without provision first being made for redistribution of that part of the authorized capitalization provided for in the Plan which was previously allocated for distribution to the holders of the Junction Bonds; such provision to include provision for distribution to the holders of the General Mortgage Bonds of at least an equivalent face amount of additional securities of the reorganized Debtor.

[fol. 780] D. That in no event shall the Plan be confirmed without provision first being made (a) for distribution of a substantial part or all of the surplus cash accumulated in the hands of the Debtor's Trustees since the date of the promulgation of the Plan by the Commission in reduction of the unpaid interest accrued on the Debtor's securities senior to the General Mortgage Bonds, and (b) for redistribution of that part of the authorized capitalization provided for in the Plan which was previously allocated for distribution to the holders of such senior securities on account of such unpaid interest; such provision for redistribution to include provision for distribution to the holders of the General Mortgage Bonds of at least an equivalent face amount of additional securities of the reorganized Debtor.

E. That this Court make such adjustment or change in the allotment of securities, consistent with the provisions of the Plan, or direct the reorganization committee provided for in the Plan to make such adjustment or change, as may be reasonably required to redistribute the new securities of the reorganized Debtor, authorized in the Plan, aggregating approximately $2,720,000 in face amount, which previously were to have been distributed to the holders of the Junction Bonds, which securities have become available for redistribution through changes in the amounts of the obligations in the Plan shown as outstanding.

F. That this Court make such adjustment or change by finding that pursuant to Order No. 484, entered on or about September 16, 1943, the Debtor's Trustees have, out of surplus cash from wartime earnings, purchased and now own Junction Bonds aggregating approximately $2,720,000; that by reason thereof it is no longer necessary for the reorganized Debtor to issue new first mortgage bonds or new [fol. 781] income bonds in exchange for the Junction Bonds so purchased by the Debtor's Trustees; and by directing that an adjustment or change in allotment, consistent with the provisions of the Plan, be made by making a redistribution of such excess securities.

G. That this Court order and require that further adjustments or changes in allotment of securities, consistent with the provisions of the Plan, be made so as to give benefit in an equitable manner to the holders of the General Mortgage Bonds of the additional surplus cash (including sums invested in government bonds) accumulated in the hands of the Debtor's Trustees out of wartime earnings and not reasonably needed in the operation requirements of the reorganized Debtor; that this Court make such adjustment by determining the amount of such surplus cash now on hand after deducting what is prudently necessary to meet the operation requirements of the reorganized Debtor and by ordering such surplus cash used by the Debtor's Trustees in the reduction of the accumulated interest on claims senior to the General Mortgage Bonds and by ordering a redistribution of the new securities made available by such payments or by such change in the amounts of obligations in the Plan shown as outstanding.

H. That in the event this Court is unwilling, without the approval of the Commission, to make the adjustments or changes in allotment of securities authorized in the Plan herein prayed for, this Court render its opinion that such adjustments or changes in allotment should be made and send a copy of such opinion to the Commission so that the Commission, of its own motion, may file a supplemental report and order approving such adjustments or changes.

I. That the Plan be referred back to the Commission for further proceedings so that the holders of the General Mort-

gage Bonds will not be injured by the great increase in the [fol. 782] indebtedness senior to them resulting from the accumulation of unpaid but earned interest during these proceedings and will be given the benefit of the Debtor's net income available for interest earned during these proceedings as well as the great expenditures of the Debtor's Trustees in improving Debtor's property, the improvements in cash and current asset position and the Debtor's greatly increased earnings during said period.

J. That it have such other and further relief as to this Court seems appropriate.

Dated: August 22, 1944.

Respectfully submitted, City Bank Farmers Trust Company, as Trustee as aforesaid, by Ralph E. Morton, Vice President; Mitchell, Capron, Marsh, Angulo & Cooney, 29 Exchange Place, New York 5, New York; Dines, Dines and Holme, by Peter H. Holme, First National Bank Building, Denver 2, Colorado, Attorneys for City Bank Farmers Trust Company, as Trustee as aforesaid.

Edward E. Watts, Jr., Peter H. Holme, Milton J. Keegan, of Counsel.

Filed United States District Court, Denver, Colorado, Aug. 29, 1944. G. Walter Bowman, Clerk.

[fol. 783] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL

Notice is hereby given that City Bank Farmers Trust Company, a corporation, as Trustee Under the General Mortgage of the Debtor, one of the parties in this action, hereby appeals to the United States Circuit Court of Appeals for the Tenth Circuit, from the final Order Confirming Plan of Reorganization and final Order Denying Petition of City Bank Farmers Trust Company, as Trustee of the General Mortgage, for Construction of the Plan and for Other Relief, entered in this action on November 29, 1944,

pursuant to Memorandum Opinion on Confirmation of Plan filed in this action on November 1, 1944.

Dated at Denver, Colorado, December 15, 1944.

City Bank Farmers Trust Company, as Trustee under the General Mortgage of the Debtor, by (Sd.) Mitchell, Capron, Marsh, Angulo and Cooney.

Address: 20 Exchange Place, New York (5), New York.

(Sd.) Edward E. Watts, Jr., Dines, Dines and Holme, Peter H. Holme, Milton J. Keegan, Attorney for City Bank Farmers Trust Company, as Trustee, as aforesaid.

Address: 1210 First National Bank Building, Denver (2), Colorado.

Filed United States District Court, Denver, Colorado, Dec. 15, 1944. G. Walter Bowman, Clerk.

[fol. 784] IN UNITED STATES DISTRICT COURT

STATEMENT OF POINTS ON WHICH APPELLANT, CITY BANK FARMERS TRUST COMPANY, AS TRUSTEE UNDER THE GENERAL MORTGAGE, INTENDS TO RELY

City Bank Farmers Trust Company, as Trustee under the Debtor's General Mortgage, dated February 1, 1924, hereby makes the following statement of points on which it intends to rely on the appeal:

1. The District Court erred in overruling and denying the objections to confirmation made by City Bank Farmers Trust Company, as Trustee.

2. The District Court erred in confirming the Plan over the rejection of the Plan by 79.33% of the holders of the General Mortgage Bonds voting on the Plan.

3. The District Court erred in holding that the Plan makes adequate provision for fair and equitable treatment for the interests or claims of the holders of the General Mortgage Bonds.

4. The District Court erred in holding that the rejection of the Plan by 79.33% of the holders of the General Mort-

gage Bonds voting on the Plan was not reasonably justified in the light of the respective rights and interests of such holders and all the relevant facts.

[fol. 785] 5. The District Court erred in holding that the Plan conforms to the requirements of clause (1) of the first paragraph of subsection (e) of Section 77 of the Bankruptcy Act; namely, in holding, in effect, that the Plan is fair and equitable, affords due recognition to the rights of the General Mortgage Bondholders, does not discriminate unfairly in favor of other classes of creditors and against the General Mortgage Bondholders, and will conform to the requirements of the law of the kind regarding the participation of the various classes of creditors and stockholders, particularly the General Mortgage Bondholders.

6. The District Court erred in construing said Section 77 as giving the Court power to confirm a Plan which had been rejected by 79.33% of the holders of the General Mortgage Bondholders voting on the Plan and in holding that, after the statutory rejection of the Plan by a class of secured creditors entitled to vote on it, the Plan could be confirmed without at least a majority vote of approval from the voting creditors of that class; such construction of Section 77 and such holding being an unwarranted and unconstitutional extension of the bankruptcy power upon which Section 77 depends for its constitutionality.

7. The District Court erred in construing said Section 77 as meaning that valuation is a function limited to the Interstate Commerce Commission which the District Court must follow, and in holding in its opinion filed November 1, 1944: "The Court in its plan of March 6, 1941, gave the General Mortgage bondholders more common stock than does the approved plan. The Commission, however, would not agree with our views, and it would seem a useless gesture for the [fol. 786] Court to make the same error again, assuming we had the power."

8. The District Court erred in holding, in effect, that said Commission in the Plan followed the statutory mandates of subsection (e) of said Section 77, which provides that the value of any property used in railroad operation

shall be determined on a basis which will give due consideration to the earning power of the property, past, present and prospective, and all other relevant facts.

9. The District Court erred in holding, in effect, that said Commission in the Plan followed the statutory mandates of subsection (e) of said Section 77, which provides that in determining the value of any property used in railroad operation, only such effect shall be given to the present cost of reproduction new and less depreciation and original cost of the property, and the actual investment therein, as may be required under the law of the land, in light of its earning power and all other relevant facts.

10. The District Court erred in failing to hold:

(a) that when the Debtor's reorganization petition was filed in 1935, the value of the Debtor's property exceeded the amount of the claim of all holders of General Mortgage Bonds and all creditors senior to such holders;

(b) that during the reorganization period, the Debtor's net income available for interest has exceeded all Debtor's interest requirements for all securities senior to the General Mortgage Bonds, including interest on unfunded debt;

(c) that said net earned income available for interest [fol. 787] has under the law of the land been impounded for the benefit of the several classes of creditors, including the holders of the General Mortgage Bonds; and

(d) that said net earned income available for interest is still in existence, either in the form of cash and government bonds in the hands of the Debtor's Trustees or in the form of capital improvements, additions and betterments to Debtor's road and equipment;

and in failing to hold, as a result, that the Plan, which provides for the General Mortgage Bondholders new common stock equal to 10% of their claim and forfeits 90% of their claim, does not comply with the statutory mandates and the law of the land.

11. The District Court erred in denying and overruling the petition, filed herein on or about March 31, 1944, of City Bank Farmers Trust Company, as Trustee, for construction of the Plan and for other relief.

12. The District Court erred in holding, in its opinion filed November 1, 1944, that the Court had no power to make or order the reallocation of the securities authorized in the Plan and there allotted to the holders of the Rio Grande Junction 5's (bonds of the Debtor's wholly-owned subsidiary, Rio Grande Junction Railroad Company), which bonds in the meantime had been purchased by the Debtor's Trustees pursuant to the orders of the Court.

13. The District Court erred in holding that the Interstate Commerce Commission has no power to delegate [fol. 788] powers or duties to the Court and in holding that, notwithstanding the following Plan provisions:

> "In view of possible changes in the amounts of the obligations herein shown as outstanding, the reorganization committee shall be authorized, in order to give effect to such changes, to make such adjustments in the claims provided for in the plan, and such changes in allotment of securities, consistent with the provisions of the plan, as may be approved by the court",

the Court does not have the power to make the reallocation requested in said petition.

14. The District Court erred in failing to hold that the purchase by the Debtor's Trustees of said Rio Grande Junction 5's caused this senior claim, aggregating $2,758,333, to become dead to the extent that it no longer is necessary or proper to issue any of the securities authorized in the Plan in exchange therefor; and in failing to hold that all of the capitalization authorized in the Plan should be distributed to creditors.

15. The District Court erred in sustaining objection to testimony of Ralph E. Morton that it was reasonable for the General Mortgage Bondholders to vote to reject the Plan; and in failing to consider the testimony of Miles C.

Kennedy that said Bondholders were reasonably justified in voting to reject the Plan.

Dated December 19, 1944.

City Bank Farmers Trust Company, As Trustee under the General Mortgage of the Debtor, by (Sd.) Mitchell, Capron, Marsh, Angulo & Cooney.

Address: 20 Exchange Place, New York 5, New York.

[fol. 789] Edward E. Watts, Jr., Dines, Dines & Holme, Peter H. Holme, Milton J. Keegan, Attorneys for City Bank Farmers Trust Company, as Trustee, as Aforesaid.

Address: 1210 First National Bank Building, Denver 2, Colorado.

Dec. 21, 1944. G. Walter Bowman, Clerk.

[fol. 790] In United States District Court

Objections of Guy A. Thompson, Trustee in Bankruptcy of Missouri Pacific Railroad Company to Confirmation of Plan of Reorganization Approved by Court's Order No. 495.

Comes now Guy A. Thompson, Trustee in Bankruptcy of Missouri Pacific Railroad Company (hereinafter called "Missouri Pacific Trustee"), and in response to order of this Court entered the 20th day of July, 1944, setting the question of confirmation of Plan of Reorganization approved by Order No. 495 of the Court for hearing on the 30th day of August, 1944, files herein and presents to the Court his objections to the confirmation by the Court of the Plan of Reorganization of the Debtor, The Denver and Rio Grande Western Railroad Company, and the secondary Debtor, The Denver and Salt Lake Western Railroad Company, heretofore approved by the Court on the 25th day of October, 1943.

Missouri Pacific Trustee objects to the confirmation by the Court of such Plan of Reorganization (hereinafter sometimes referred to as the "Plan") for the following reasons:

1. Missouri Pacific Trustee holds title to 150,000 (50%) of the outstanding shares of the no-par common stock;

$608,000 par value of the outstanding preferred stock; and $1,000,000 of Refunding and Improvement Mortgage Bonds of The Denver and Rio Grande Western Railroad Company (sometimes referred to herein as the "debtor"); and because of such ownership, the interests of Missouri Pacific Trustee will be materially and adversely affected if the Plan should be confirmed, by reason of the fact that the Plan certified to the Court contains a finding by the Commission that the equities of the owners of the common and preferred stock of the Debtor have no value, and also contains other provisions adversely and unlawfully affecting the interests of Missouri Pacific Trustee as hereinafter set forth.

2. The Plan does not comply with the provisions of Subsection (b) of Section 77 of the Act of Congress Relating [fol. 791], to Bankruptcy, as amended, in that such Plan does not preserve the interests of the stockholders of the Debtor by providing for the issuance to such stockholders of options or warrants to receive or to subscribe for, upon fair and reasonable terms, common and preferred stock in the new or reorganized company.

3. The Commission, in finding, as set forth in the Plan, that the equities of the owners of the common and preferred stock of the Debtor have no value, and the Court in approving the Plan containing such finding, failed to give due, full, and lawful effect, and due and lawful consideration, to the value of the properties of The Denver and Rio Grande Western Railroad Company and to the earning power of such properties, past, present, and prospective, together with all relevant facts.

4. The Plan does not conform to the requirements of Clauses (1) to (3), inclusive, of the first paragraph of Subsection (e) of said Section 77, in that such Plan is unfair and inequitable, does not afford due recognition to the rights of each class of creditors and stockholders, and does not and will not conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders.

5. There has been no valuation of the properties of the Debtor such as the law requires, and the Interstate Commerce Commission is without power or jurisdiction lawfully to determine whether the equities of the owners of the com-

mon and preferred stock of said Debtor are with or without value until there has been a full and complete valuation of the properties of such Debtor; and confirmation of such Plan by this Court, absent such valuation, would be invalid.

6. The finding by the Interstate Commerce Commission that the equities of the owners of the Debtor's common and preferred stock have no value is not supported by substantial testimony and is clearly erroneous; and a confirmation [fol. 792] of the Plan by this Court would therefore be invalid.

7. The equities of the owners of the common and preferred stock of the Debtor have a substantial value; and by reason of that fact any plan is unfair and inequitable which fails to afford due recognition to the rights of such stockholders, and will not conform to the requirements of the law of the land regarding the participation of such stockholders in the Plan unless such Plan, having regard to the value of such equities, provides either for the issuance to such stockholders of stock, or options or warrants to receive or to subscribe for, upon fair and reasonable terms, common or preferred stock in the new or reorganized company.

8. The Plan does not comply with the provisions of said Sub-section (b) of said Section 77 in that, as disclosed by the testimony offered at hearings held by the Interstate Commerce Commission, a large portion of the traffic carried or which may be carried by the Debtor or by the new or reorganized company, is and will be bridge or overhead traffic, which neither originates at nor is destined to points on the lines of the Debtor. A large portion of said bridge traffic passes through the Pueblo, Colorado, gateway, the volume of which is and has been in large measure due to the fact that the Missouri Pacific Railroad Company or the Missouri Pacific Trustee, as the case may be, is a 50% owner of The Denver and Rio Grande Western Railroad Company; and unless the present measure of ownership of the Missouri Pacific Trustee in The Denver and Rio Grande Western Railroad Company is carried forward into such new or reorganized company, a long-existing and established route of trade and commerce through the Pueblo gateway, made

up of the lines of the Missouri Pacific Railroad Company and The Denver and Rio Grande Western Railroad Company, will be substantially impaired and the volume of traffic moving over such route will be substantially decreased, as the full and effective cooperation necessary to maintain such routes and cause such a large volume of [fol. 793] traffic to move thereover, can be brought about and maintained only by ownership by the Missouri Pacific Trustee in the new or reorganized Company equal to that held by such Trustee in The Denver and Rio Grande Western Railroad Company.

9. It is the opinion of the Missouri Pacific Trustee that the necessary maintenance of the Pueblo gateway can be had only through full cooperation on the part of the Debtor and those operating the properties of the Missouri Pacific Railroad Company, and that such full cooperation cannot be had unless the present ownership of the Missouri Pacific Trustee in the Debtor is carried forward in the new or reorganized company, and that, absent such ownership by Missouri Pacific Trustee in such new or reorganized company equal to the present ownership of such Trustee in the Debtor, the traffic and revenues of such new company will be so impaired that there will not be sufficient or adequate coverage of the fixed charges of the new or reorganized company; and that, by reason of the foregoing, the Plan should not be confirmed, as such Plan does not and will not comply with the provisions of Sub-section (b) of said Section 77.

10. The Plan does not provide, having regard and giving effect to the value of the equities of the owners of the common stock of the Debtor, for the issuance to Missouri Pacific Trustee of at least one-half of the common stock of the new or reorganized company, or options or warrants to receive or subscribe for, upon fair and reasonable terms, not less than one-half of the common stock of the new or reorganized company, and that such new common stock carry powers of management and control of such reorganized company; and by reason of such failure, the Plan does not conform to the requirements of Clause (1) of [fol. 794] Sub-section (e) of said Section 77.

Wherefore, Missouri Pacific Trustee respectfully prays that the Court refuse to confirm the Plan.

Dated at St. Louis, Missouri, August 26, 1944.

Guy A. Thompson, Trustee in Bankruptcy of Missouri Pacific Railroad Company, by Russell L. Diermont, H. H. Larimore, Counsel. Address of Counsel: Missouri Pacific Building, Thirteenth and Olive Streets, Saint Louis 3, Missouri.

Filed United States District Court, Denver, Colorado Aug. 28, 1944—G. Walter Bowman, Clerk.

[fol. 795] BEFORE THE INTERSTATE COMMERCE COMMISSION

DENVER & RIO GRANDE WESTERN RAILROAD COMPANY—REORGANIZATION

Finance Docket No. 11002

Raleigh Hotel, Washington, D. C.,
Tuesday, October 20, 1936.

The above-entitled matter came on for hearing at 10 o'clock a. m., pursuant to notice.

Before Examiners R. T. Boyden and Homer H. Kirby

APPEARANCES:

Pierce & Greer, by F. C. Nicodemus, Jr., 35 Wall Street, New York City; and Hodges, Wilson & Vidal, by William V. Hodges, Equitable Building, Denver, Colorado, appearing for Denver & Rio Grande Western Railroad Company, Debtor.

Henry W. Anderson, (Hunton, Williams, Anderson, Gay & Moore, of counsel) and George D. Gibson (Hughes, Schurman & Dwight, of counsel), Electric Building, Richmond, Virginia; and Oscar R. Ewing, 100 Broadway, New York City, New York, appearing for Insurance Group Committee, [fol. 796] by George S. van Schaick, Chairman.

Harry Hoffman, 30 Pine Street, New York City, and Edgar J. Goodrich and Mildred E. Reeves, Investment

Building, Washington, D. C., appearing for Untermyer Family Group.

John B. Marsh, 20 Exchange Place, New York City, appearing for City Bank Farmer's Trust Company, Trustee of General Mortgage.

Messrs. Fred N. Oliver and Karl Michelet, 110 E. 42nd Street, Room 1313, New York City, New York, appearing for Savings Bank of Baltimore, Maryland.

Charles J. Nasmyth, 313 East 58th Street, New York City, New York, appearing for himself.

Messrs. John E. Benton and Clyde S. Bailey, 806-808 Earle Building, Washington, D. C., appearing for Public Service Commission of Utah.

Simon Fleishman, 1331 G Street, N. W., Washington, D. C., appearing for Robert R. Young, et al.

H. H. Larimore, 2008 Missouri Pacific Building, St. Louis, Missouri, appearing for Guy A. Thompson, Trustee, Missouri Pacific Railroad Company.

Russell L. Dearmont, 705 Olive Street, St. Louis, Missouri, appearing for Guy A. Thompson, Trustee, Missouri Pacific Railroad Company.

Messrs. W. Heyward Myers, Jr. and William Clarke [fol. 797] Mason, 2107 Fidelity-Philadelphia Trust Building, Philadelphia, Pennsylvania, appearing for Security Research Bureau.

Messrs. Edwin S. S. Sunderland and Thomas O'G. Fitzgibbon, 15 Broad Street, New York, New York, appearing for Guaranty Trust Company of New York as successor Trustee of the Rio Grande Western Railway Company First Consolidated Mortgage Deed, dated April 1, 1899.

Daniel Willard, Jr., Transportation Building, Washington, D. C., appearing for The Railroad Credit Corporation.

Stewart & Shearer, by Gerald Hughes, International Trust Building, Denver, Colorado, appearing for United States Trust Company of New York, Mortgage Trustee.

Henry L. Umbarger, Provident Trust Company, 17th & Chestnut Streets, Philadelphia, Pennsylvania, appearing for Provident Trust Company as unofficial observer.

Philip B. Fisher, 246 South 15th Street, Philadelphia, Pennsylvania, appearing for Security Research Bureau.

Erskine R. Myer, Midland Savings Building, Denver, Colorado, appearing for Raymond L. Sauter, Trustee of Denver & Salt Lake Western Railroad Company. (Entered by C. M. Clay of R. F. C.)

Messrs. James B. Alley, General Counsel, and C. M. Clay, Assistant General Counsel, 1825 H Street, N. W., Washing-
[fol. 798] ton, D. C., and C. C. McChord, Counsel, 714 Southern Building, 15th & H Streets, N. W., Washington, D. C., appearing for Reconstruction Finance Corporation.

Arthur A. Gammell, 15 Broad Street, New York City, New York, appearing for the Chase National Bank of the City of New York as trustee under the Denver & Rio Grande Western Railroad Company Refunding and Improvement Mortgage dated February 1, 1924.

* * * * * * *

[fol. 799] EXAMINER KIRBY:

Since the filing of the petition by the Denver & Rio Grande Western Railroad Company in the United States District Court, various documents have been filed in the proceedings in that court for reorganization of this Debtor, and copies of certain of those documents have been transmitted to the Interstate Commerce Commission, pursuant to the rules of the United States Supreme Court.

May it be understood that documents heretofore and hereafter so transmitted to this Commission and filed in this docket, constitute a part of the record in this proceeding?

Mr. Nicodemus: The Debtor so stipulates, and also stipulates that the same apply to the annual reports of the Debtor or any of its subsidiaries, filed with the Commission.

[fol. 800] Mr. Anderson: Will copies of those be furnished to the various intervenors, Mr. Examiner? Would the Debtor supply copies of those papers to the various intervenors, because otherwise we would not know what was filed, and we would have to come here and examine the records to know what was in the record, which is rather difficult.

Mr. Nicodemus: You will know what is in the record. You will get it currently.

Mr. Anderson: You mean only the printed record of the court?

Mr. Nicodemus: Yes, sir.

Mr. Anderson: Any other documents, outside of the printed record of the court, can you not supply us with copies?

Mr. Nicodemus: The stipulation does not cover anything outside the printed record of the court.

Mr. Anderson: If it is in the printed record of the court, we get copies of that. If it is the annual report of the company, and not in the printed record of the court, will you furnish us copies of those?

Mr. Nicodemus: We cannot undertake to furnish the annual reports which we file with the Commission.

Mr. Anderson: We may ask you to furnish us copies of the annual reports as printed.

Mr. Nicodemus: We probably would.

[fol. 801] Mr. Anderson: I only want to be sure that we know what is going into this record.

Examiner Kirby: Mr. Nicodemus, with respect to the annual reports of the Debtors or the carriers to the Commission, I do not believe we should stipulate or incorporate by reference in a general manner all the annual reports in the record of this proceeding. Where the occasion arises for specific schedules to be referred to, we concede the situation as it arises.

Mr. Nicodemus: Very well. That is quite satisfactory.

* * * * * * *

[fol. 802] William Wyer was sworn and testified as follows:

Direct examination.

By Mr. Nicodemus:

Q. Mr. Wyer, will you state your full name and occupation to the Examiners?

A. William Wyer, secretary and treasurer of the Missouri Pacific Railroad Company and special representative of the Denver & Rio Grande Western Railroad Company in connection with plans for reorganization.

* * * * * * *

[fol. 803] By Mr. Nicodemus:

Q. Mr. Wyer, have you prepared, or caused to be prepared, a mortgage map of the Denver & Rio Grande Western Railroad Company and its subsidiary and affiliated companies?

A. Yes, I have.

Q. Has that map been distributed among counsel and intervenors?

A. Yes.

Q. Have you any explantory statement to make respecting it, before I offer it in evidence?

A. This is not only a mortgage map but combines several purposes in one map. It shows all the lines of the different companies, and it also shows the connecting rail- [fol. 804] roads at all points of connection. It shows the liens of the different mortgages, and it shows the operating divisions into which the company is divided for operating purposes.

I would like to point out the important features of each of those points on this map, because this is the only map of the entire system which will be presented. First I will point out the lines owned by the different companies, and I will point out the subsidiaries, and the balance will be lines owned by the parent company, the Denver & Rio Grande Western.

The Denver & Salt Lake owns the line starting at Denver, in the northeast corner of the map, and extending west through the Moffat Tunnel to Orestod, and then north from Orestod to Steamboat Springs and west to Craig.

The Denver & Salt Lake Western owns the line extending from Orestod, on the Denver & Salt Lake, west and a little south to Dotsero. The Rio Grande Junction Railway Junction Company owns the line extending from Rifle, which is directly west of Dotsero, west and a little south to Grand Junction.

The Goshen Valley, the fourth subsidiary, is located in Utah, south and a little west of Utah Lake, extending from a point designated as Pearl Junction to Dividend and Iron King, which is a small branch line.

[fol. 805] The remainder of the lines shown in heavy delineations on this map are owned by the Denver & Rio Grande Western Railroad Company or are operated under trackage rights by them. The trackage rights are practically negligible.

As to important connections:

At Denver the important connections are the Union Pacific to the East and North and the Burlington to the East, the Rock Island to the East. The Rock Island uses the Union Pacific into Denver from Limon, shown right near the edge of the map, a little southeast of Denver, and the Colorado & Southern which runs north out of Denver

and also south to Colorado Springs, although that line is not shown on this map.

Also the Santa Fe connects with the lines at Denver, running south from that point to Colorado Springs.

The lines of the Santa Fe and the Denver & Rio Grande Western, between a point just south of Denver and a point just north of Pueblo, are used jointly by those two companies and by the Colorado & Southern as a paired track.

So that the line of the Santa Fe, also used by the Colorado & Southern, is not shown on this map because it is really exactly the same line as used by the Denver & Rio Grande Western.

[fol. 806] At Colorado Springs the principal connection is the Rock Island to the East.

At Pueblo, south of Colorado Springs, the principal connections are the Missouri Pacific to the East, the Santa Fe to the East, and the Colorado & Southern Line, which continues on to the South.

Between Pueblo and Walsenburg, which is about 50 miles south of Pueblo, the Colorado & Southern Line and the Denver & Rio Grande Western Line are used as a joint double track by those two properties, so that that line is not shown separately.

At Trinidad, the southeast corner of the State of Colorado, connection is made with the Santa Fe and the Colorado & Southern. The Santa Fe's main line to California passes through Trinidad, and the Colorado & Southern extends southeast into Texas from that point.

There are a number of short lines in the State of Colorado and the State of Utah which I shall not mention. They are shown, the connections are shown on the map, but the only other important connections are on the West at the Utah common points. At Ogden, in the northwest corner of the map, connection is made with the Southern Pacific, which extends west from that point; with the Union Pacific which extends north and northwest, and also to the east, and the Union Pacific also has a line between Ogden, [fol. 807] Salt Lake City, and Provo, which practically parallels the line of the Denver & Rio Grande Western.

At Salt Lake City the principal connections are the Western Pacific to the west, and the Union Pacific, which is shown on this map by its predecessor name, the San Pedro, Los Angeles & Salt Lake, which extends to the southwest. The San Pedro Los Angeles & Salt Lake, one of its prede-

cessor names, was also the Los Angeles & Salt Lake, which also connects with the Denver & Rio Grande Western at Provo, from where it extends to Lynn Junction and on to the southwest.

As to mortgages, I think it would be particularly interesting to take the main line of the Denver, starting at Denver, and trace it west and follow the different mortgage liens as they lie on that main line, because that is one of the points about which this plan turns.

From Denver, as I have shown, the Denver & Salt Lake owns the line as far west as Orestod, and that line is subject to two mortgages, the first mortgage of the Denver & Salt Lake and an income mortgage which is the second mortgage on the line.

The Denver & Rio Grande Western has trackage in that territory. These mortgages will be described more in detail later as to their terms, so that I shall not do that here but just try to help you get them in mind.

[fol. 808] From Orestod to Dotsero the line is owned by the Denver & Salt Lake Western, a wholly owned subsidiary of the Denver & Rio Grande Western; and there is no mortgage on that property but the stock of that company is pledged with the Reconstruction Finance Company.

I should also say, perhaps, that the stock of the Denver & Salt Lake, to the extent that it is owned by the Denver & Rio Grande Western, which is more than 99 percent, is also pledged with the Reconstruction Finance Corporation. So that the R. F. C., in effect, holds a lien on the equity of the Denver & Rio Grande Western on the line from Denver to Dotsero.

The line from Orestod to Dotsero is what I shall refer to frequently as the Dotsero Cutoff, or the cutoff, and was built, as will be shown later in more detail, in order to shorten the distance between Denver and Salt Lake City.

Prior to the construction of that cutoff, the Denver had had to operate out of Denver south to Pueblo, west to Salida, and north through Leadville to Dotsero, and the construction of that cutoff and arrangements for use of the Denver & Salt Lake saved approximately 173 miles in that haul between Denver and Salt Lake City, and the R. F. C. assisted in the financing of that construction and has the lien on that line.

[fol. 809] South from Dotsero west to Rifle and through Glenwood Springs, the first lien is held by the Denver &

Rio Grande Railroad Company First Consolidated Mortgage. That is a mortgage of the predecessor Denver & Rio Grande Railroad Company, which owned the property prior to the 1908 consolidation.

Now, from Rifle to Grand Junction the line is owned by the Rio Grande Junction Railway Company, and there is a first mortgage, a small first mortgage, on that line, and the bonds are in the hands of the public. There is also a second mortgage, which, together with all the stock, is pledged under the refunding and improvement mortgage of the Denver & Rio Grande Western. That is a mortgage which was put on the property in 1924, following the second receivership.

From Grand Junction to Crevasse, the next station west —I think it is 18 miles—the lien is also held by the Denver & Rio Grande first and consolidated mortgage, and from Crevasse west to Ogden the first lien is held by the Rio Grande Western first trust 4's of 1939 and the second lien by the Rio Grande Western first consolidated 4's of 1949. Both of those mortgages are mortgages of the old Rio Grande Western Railway Company which owned the property prior to the 1908 consolidation.

Now, the other main line of the Denver is the old route [fol. 810] south from Denver to Pueblo and west to Salida, and up to Dotsero, and that mileage is all under the first lien of the Denver & Rio Grande Railroad Company first consolidated mortgage.

The Narrow Gauge lines, located approximately in a square around the words "Alamosa Division" which appear in the southern part of the State of Colorado, are also subject to the first lien of the D. & R. G. First Consolidated Mortgage, with the exception of one small piece on the Santa Fe Branch, right at the end of the Santa Fe Branch, which is subject to the Refunding and Improvement Mortgage, created in 1924.

Those, I think, give you the principal points about the mileage liens of the different mortgages.

The remaining point shown by this map is the division into operating divisions, of which there are four. The lines comprising the long dash and two dots separate the mileage as to operating divisions. The Pueblo Division has the eastern part of the line, the Alamosa Division has the Narrow Gauge and a small part of the Standard Gauge and the Grand Junction Division has the line from Salida.

and Orestod west to Helper in Utah, and the Salt Lake Division has the lines west of Helper.

By Mr. Nicodemus:

Q. Was this map prepared by the Engineering Department or other proper department of the Denver & Rio [fol. 811] Grande Western Railroad Company, or its trustees, in its regular course of business?

A. This was prepared especially at my request for use in this case.

Q. And you have personally scrutinized it?

A. Yes, I have.

Q. You say that it portrays with reasonable accuracy the various properties which you have mentioned in your statement?

A. I do not think there are any mistakes in it. There are none which I have been able to find out.

Mr. Nicodemus. This is offered as exhibit No. 7.

Examiner Kirby: In the absence of objection, the map which the witness has described will be received in evidence as Exhibit No. 7.

(Exhibit No. 7, Witness Wyer, received in evidence.)

* * * * * * *

[fol. 812] When we made our first studies of the cutoff, back in 1926 and 1927, we all felt at that time on the Denver & Rio Grande Western that it would take at least five years to develop the cutoff business to what you might call a normal level, considering the general levels of traffic, and we felt, and all of our figures showed very definitely, that during at least the first three years of cutoff operation the Denver & Rio Grande Western would be worse off from a net income standpoint than it would be without the cutoff.

But it seemed quite clear that as this business over the [fol. 813] cutoff was developed and the Denver & Rio Grande Western began to prove its place as a through route having a short line between Denver and Salt Lake, and being thus better able to participate in the handling of the traffic from the Pacific Coast to Chicago through Denver, that deficit would disappear, and the final result would be well worth the expense of constructing the cutoff and the expense involved in the trackage arrangement with the Denver & Salt Lake, and the expense of acquiring that stock.

The cutoff operations have turned out exactly as we had felt that they would, on the basis of our analysis. And the first year, as I will show in more detail later, the Denver & Rio Grande Western was at least $800,000 worse off because of the cutoff in that first year than it would have been without it.

The Denver & Salt Lake, however, benefited from the opening of the cutoff route, because of the rental which it collects from the Denver & Rio Grande Western for the use of its line, and the net benefit to the Denver & Salt Lake is something in excess of $400,000 a year.

So that part of the loss on the Denver & Rio Grande Western of over $800,000 shows up in the income account of the Denver & Salt Lake, of which the Denver & Rio Grande Western owns more than 99 per cent of the stock. [fol. 814] Another thing before we leave Exhibit 17-B:

As I have told you the cutoff started operations on June 15, 1934, and it so radically changed the whole operating picture and the whole earning situation of the Denver & Rio Grande Western, that back of that time your figures are not really as significant as they are since that time. In other words, we have a pretty short period with which to work, on which we could base conclusions as to the present situation.

So that we have gone back to the very beginning of the cutoff opening and have constructed some figures which I will present later in great detail, covering the twelve months ended June 30, 1935, which is the first full year of cutoff operation, excluding the first 15 days, and that is in order to deal with the period which includes the effect of this cutoff, which I have just outlined to you.

We will pay more attention to that period, the 12 months ending June 30, 1935, than we will to the calendar year periods. As a matter of fact, the net income of the Denver & Rio Grande Western during that 12-months' period was almost exactly the same as it was during the calendar year 1935. So that I feel that the analyses which we have made of that first 12-months' period can apply very well to the [fol. 815] calendar year 1935, as well.

* * * * * * * *

[fol. 816] It is estimated by the trustees that they will earn, available for interest, during the year 1936, $2,205,000. This is in spite of the fact that they expect their gross

revenues to be very substantially higher than they were in 1935. In 1935 the operating revenues of the Denver & Rio Grande Western and these same companies was $20,944,000, and they expect that to be $25,519,000, or an increase of nearly 25 per cent, a little less than that. In spite of that they expect the income available for interest to fall from $2,832,000 to $2,205,000.

The great part of that decrease in net income may be found in the increase in operating expenses. Maintenance [fol. 817] of way they expect to increase from $2,491,000 to $3,972,000. Maintenance of equipment they expect will increase from $4,861,000 to $6,235,000, and transportation expense they expect will increase from $7,146,000 to $8,624,000. These also represent very substantial increases in the ratios as far as maintenance of way and maintenance of equipment are concerned, and because of the very heavy increases in maintenance work in 1936, during the trusteeship, we do not believe that 1936 is representative in any way of the future earning power of the property.

These maintenance expenditures are, in my opinion, much higher than would be required for 1936 business by itself under normal operations. They have undertaken a very extensive rehabilitation and improvement program, and I believe that those maintenance expenditures are very much higher than would be required if that very large program was not under way at the present time. They include, or will include, very heavy expenditures for the calendar year in connection with improvement work and also very heavy increase in the ordinary maintenance work.

* * * * * * *

[fol. 818] By Mr. Nicodemus:

Q. Mr. Wyer, we will now pass from income to traffic density. Have you available for distribution charts showing the traffic density on the lines of the Debtor and its subsidiaries?

A. Yes, I have.

Q. Will you produce the traffic density charts for the calendar year 1935?

A. I will.

Q. Is that the latest available chart?

A. Yes; it is.

Q. That covers all of the system, as I understand it?

A. Yes, it does.

Q. If you have any comments to make on the chart, we would be glad to have them in the record.

A. This is the first full calendar year after the opening of the Dotsero Cutoff, and I want to call particular attention to three or four things on it.

You will notice especially the decrease in the volume of tonnage on the main line east of Dotsero as compared with the tonnage west of Dotsero, where the traffic diverges to [fol. 819] go over the cutoff. The figures show that about 814,000 net ton miles per mile of road is the average traffic density between Grand Junction and Minturn for the whole district, and that in addition to that average there are 554,000 net ton miles per mile of road, which leave the main line at Dotsero eastbound to come in over the cutoff to Denver.

So that of your total traffic about 40 percent at present is moving over the cutoff into Denver, and about 60 percent is moving over the old line to Pueblo.

Now, that does not mean that you have had 40 percent of your traffic diverted to the cutoff, because some of the 40 per cent now moving over the cutoff represents new traffic. And in our figures as to the effect of the cutoff, which will be presented later, we have made a distinction between the new traffic and the old traffic diverted. But that shows the extent of the volume moving over the two routes at the present time.

Then I also want to call attention to the very light traffic density of the Narrow Gauge Lines.

Q. There does not seem to be any at all.

A. On most of the lines it is so light that it is less than 50,000 net ton miles per mile of road, and consequently does not carry a line on the chart, but the traffic density is expressed solely in figures. That is true of all the narrow [fol. 820] gauge lines with the exception of the line from Crested Butte, which is directly south of Dotsero, where coal originates and comes south into Gunnison, and over Marshall Pass to Mears Junction and into Salida, where it is transferred to the standard gauge.

Then there is also a fair traffic density coming from Durango, in the southwestern corner of the narrow gauge, east to Chama, then over Cumbres Pass to Antonito, and dropped at Alamosa, where it is transferred to the standard

gauge. But with those two exceptions the narrow gauge traffic is very, very light.

Q. The line to Somerset shows some?

A. Somerset is a standard gauge line.

Then I also want to point out the heavy coal traffic in Utah, which originates in and around Helper, and which you will notice increases the westbound traffic over Soldier Summit very materially.

The traffic westbound before Helper is reached averaged in 1935, 859,000 net ton miles per mile of road, and that was increased nearly 200 percent by the addition of the coal traffic from the Helper territory. That coal traffic in the Helper territory is the largest single item traffic on the road.

Q. That affects the traffic density eastbound to some ex-
[fol. 821] tent, does it not?

A. Very, very little.

Q. Helper over to Mounds?

A. Very little.

Examiner Boyden: Is the old line from Denver through Pueblo and Salida and Dotsero used now for through traffic?

The Witness: There would not be any through traffic moving that way, but would all move through the cut-off.

Examiner Boyden: All the traffic coming from Denver through Pueblo is destined to some point south of there or some point on the line between Denver and Dotsero?

The Witness: Yes, sir.

Mr. Ewing: What are the dotted lines up on the Denver & Salt Lake?

The Witness: The dotted lines up on the Denver & Salt Lake represent the Denver & Salt Lake's traffic. The solid lines represent the Denver & Rio Grande Western's traffic.

Mr. Hoffman: What do the figures represent?

The Witness: The figures represent units of 100,000 net ton miles haul per mile of road.

Mr. Hoffman: The 6.65 would be 66,500?

The Witness: It would be 665,000 net ton miles per mile
[fol. 822] of road per year.

Examiner Kirby: Is the line from Montrose to Grand Junction standard gauge?

The Witness: Yes, sir, that is standard gauge. The narrow gauge starts at Ouray, you might say, south of Montrose, comes north to Montrose, east to Gunnison, and

then includes the Crested Butte branch east to Mears Junction, including the line northeast to Salida and the Monarch branch, and south to Alamosa, and further south to Antonito, including the Santa Fe branch south of Antonito, and takes in all the line west of Antonito.

The line from Alamosa to Creede is standard guage, and there are three rails from a point north of Alamosa down through Alamosa to Antonito, so that you can load standard gauge cars in that territory and handle either standard gauge, narrow gauge cars or both in the same territory, but that takes the circumference of the narrow gauge territory.

Examiner Kirby: Is that the extent of the three-rail mileage which you just mentioned?

The Witness: The three-rail mileage is limited to that territory which I just mentioned.

Mr. Fisher: May I ask a question? These figures on the Rio Grande Junction, such as 6.29 westbound, just what does that mean?

[fol. 823] The Witness: They are in addition to the figures which are included in the shaded area, and they represent the traffic which comes in and goes off the line at Dotsero.

Mr. Fisher: They are local traffic?

The Witness: No, it is not local traffic. It is traffic handled over the cutoff which may be destined to the Pacific Coast, or it may be destined to Grand Junction, but the figures between Grand Junction and Minturn, which are included in the shaded area, represent the average traffic density between Grand Junction and Minturn, excluding the cutoff traffic, and then the extra figures shown outside the shaded area are the Dotsero Cutoff traffic in addition.

Mr. Gibson: Do I understand you to say that the only third line is at Alamosa?

The Witness: North and south of Alamosa. It extends from north of Alamosa down to Antonito.

Mr. Marsh: I do not get what the extra figures mean. Take the line between Denver and Orestod. The solid lines are the through traffic?

The Witness: Between Denver and Orestod the solid lines are the traffic of the Denver & Rio Grande Western which operate from that territory under trackage rights.

The dotted lines are the traffic of the Denver & Salt Lake. The figures in the solid line area 5.32 eastbound, for [fol. 824] example, represent the Denver & Rio Grande

Western traffic. The 6.65 represents the D. & S. L. traffic.

Mr. Marsh: I see.

The Witness: And westbound the same way.

Mr. Marsh: Then we get on to the Rio Grande Junction Line-wesfbound 6.29, which is the Denver & Rio Grande Western traffic, and 3.63 is additional traffic?

The Witness: The 6.29 represents the traffic moving through Dotsero to Minturn, and 3.63 represents the traffic coming in on the cutoff, or, rather, I should say, the 6.29 represents the westbound traffic coming from Minturn, and the 3.63 represents the traffic coming in over the cutoff.

The reason that the figures have to be shown in that way is because the wheel reports made by the conductors covering the consist of their freight trains are made in two groups. One set runs from Grand Junction to Orestod and the other set runs from Grand Junction to Minturn. So that you have two different sets of wheel reports covering that territory in there, and the statistical compilations are made separately as to the two sets of wheel reports.

Mr. Marsh: Thank you very much.

Mr. Nasmyth: From whom are the traffic rights derived? The Denver & Salt Lake?

[fol. 825] The Witness: Are you speaking now of the line between Denver and Orestod?

Mr. Nasmyth: Yes.

The Witness: The Denver & Salt Lake owns the railroad and grants trackage to the Denver & Rio Grande Western.

Mr. Nasmyth: And the heavy lines represent the trackage rights, and the dotted lines represent the Denver & Salt Lake?

The Witness: That is right.

Mr. Nasmyth: Thank you.

Mr. Hoffman: May I ask a question on the exhibit, Mr. Wyer?

The Witness: Surely.

By Mr. Hoffman:

Q. Do I correctly understand, referring to the line from Denver to Orestod, that the major portion of the Denver's traffic is westbound?

A. No, sir, the major portion of the Denver's traffic is eastbound. The major portion of the traffic on both roads is eastbound.

Q. I cannot quite see it. Is the eastbound line the one below what is designated the railroad track?

A. Yes, sir.

Q. The arrow above the railroad track points west?

A. That is right.

Q. I see. Is there any particular reason for that which [fol. 826] you know of?

A. Reason for what?

Q. Why the largest part of the traffic which goes over the cutoff should go east and the smaller part west?

A. That is the nature of the traffic. The larger part of the traffic moving over the cutoff constitutes business that originates in local territory on the D. & R. G. W., or originates at California and comes east over the Western Pacific or the Southern Pacific, and that traffic is in excess of the westbound traffic, which is quite varied, and which is handled over the cutoff.

Mr. Nicodemus: And which was true before the cutoff was built?

The Witness: It has always been true of the through traffic on the Denver & Rio Grande Western, that it has been predominantly an eastbound traffic. It is true of every transcontinental railroad.

By Mr. Hoffman:

Q. Let me ask a question. Is there any traffic which comes from the old main line of the Denver between Pueblo and Dotsero, that is routed first west and then east over the cutoff?

A. There might possibly be, especially traffic that would originate on the west side of Tennessee Pass. Tennessee Pass is not shown here, but it is between Leadville and Minturn.

[fol. 827] Now certainly any traffic that originated west of Tennessee Pass would be handled to Dotsero and over the cutoff into Denver. I do not think any would be originated east of the pass. I think the chances are it would come into Denver by the old route.

Q. Is there any chart which would indicate the amount of traffic, either actual or comparative, that originates on the old line of the Denver at a point east of Dotsero, which is passed over the cutoff?

A. No, there would not be. That would be pretty small in amount, and we have not made any analysis of that or attempted to show it.

Q. But there is some?

A. There would be some.

Q. And that, to that extent, is what we might call Eastern Lines' traffic, that is, which is credited to the Eastern Lines, or should be credited to the Eastern Lines?

A. I do not know what you mean by that.

Q. I mean the part governed by the Denver & Rio Grande mortgage as distinguished from the Denver & Rio Grande Western mortgages, or as distinguished from the Rio Grande Western's mortgage.

A. That is true, there would be some traffic moving over the cutoff that would originate in the Denver & Rio Grande's consolidated territory, and that would not be confined to [fol. 828] traffic originated between Tennessee Pass and Dotsero. There is traffic originated between Dotsero and Rifle, which originates in Denver & Rio Grande consolidated territory, and all the traffic which originates south of Grand Junction comes from that territory and goes over the cutoff.

By Mr. Nicodemus:

Q. Mr. Wyer, in your opinion, does this chart reflect with reasonable accuracy the tonnage moving over these several lines shown thereon?

A. I do not know how you could get it any more accurate than it is reflected on here.

Q. The answer is "yes"?

A. Yes, sir.

Mr. Nicodemus: We then offer it in evidence.

Examiner Kirby: May I ask who prepared the exhibit?

The Witness: These exhibits on traffic density were prepared by the trustees' organization in Denver, at my request, for use in this case.

Mr. Nicodemus: Based upon actual records?

The Witness: Yes, sir.

There is one thing more which I should say about these figures: They would include company freight. They do not have the company freight separated by itself.

By Mr. Nicodemus:

Q. That is, nevertheless, tonnage which moves over the rails?

[fol. 829] A. That is tonnage which moves over this territory.

Mr. Hoffman: May I ask another question in relation to this chart?

The Witness: Surely.

[fol. 830] By Mr. Hoffman:

Q. Is there any traffic originating at Pueblo that is sent north to Denver and over the cut-off?

A. I would not think so. I know that there is traffic which comes over the cut-off to Denver and which we move south to Pueblo, but I would not think there would be any of the reverse character. There might be an exceptional movement, but, generally speaking, that would not occur.

Q. Would it be easily possible to ascertain that?

A. No, it would not. It would be very difficult to ascertain that.

Q. Would it be easily possible to ascertain the other information which I discussed with you before, with relation to the traffic moving west over the old Denver and Rio Grand Lines and passing over the cut-off east?

A. It would be very difficult to do it. You would have to analyze every way-bill in order to get that information.

Examiner Kirby: How large an item is the company freight in these tonnage figures?

The Witness: It is about 17 per cent of the total. Of course it varies each year but, generally speaking, it would run about that percentage of the total.

Examiner Boyden: That percentage applies to the entire [fol. 831] system?

Mr. Nicodemus: Not necessarily so.

The Witness: That is a system average figure. I am going to say a good deal about company freight later on.

Mr. Nicodemus: We will try to develop that. We renew our offer of the chart for 1935.

Examiner Kirby: Is there any objection to the receipt of this exhibit?

(No response.)

If not, the Traffic Density Chart is received as Exhibit No. 21.

(Exhibit No. 21, Witness Wyer, was received in evidence.)

By Mr. Nicodemus:

Q. Mr. Wyer, have you a chart for 1934?

A. Yes, I have.

Q. Have you any comments to make on that which are different from the comments you made for the chart covering the year 1935?

A. No, sir. I think the chart shows almost exactly the same, except for this one thing: That 1934 only contemplated or only included 6½ months of operation over the cut-off, and consequently, the changes in distribution of traffic due to the cut-off are much less marked on this exhibit than [fol. 832] they were on the one for 1935.

Q. Then, in 1933 the cut-off was not in operation at all. Do you have a chart for that year, also?

A. Yes, sir.

Examiner Kirby: Do you offer this in evidence?

Mr. Nicodemus: I will in a minute.

By Mr. Nicodemus:

Q. Have you any comment to make on the chart for 1933?

A. Yes, I have some comment to make on that. I would like to ask you to compare the chart for 1933 with the chart for 1935, and note particularly that in spite of the fact that the total traffic of the company was very much heavier in 1935 than it was in 1933, the traffic on the line from Dotsero to Denver via Pueblo is substantially less in 1935 than it was in 1933.

For example, take the territory from Minturn to Salida and the traffic density decreased from 990,000 net ton miles per mile of road to 770,000 or a decrease of 22 per cent.

Examiner Boyden: Eastbound?

The Witness: Eastbound, and westbound it decreased from 634,000 to 469,000.

Now taking it between Denver and Pueblo, for example, southbound, it decreased from 445,000 to 248,000, which is [fol. 833] almost half—not quite, and northbound it decreased from 794,000 to 682,000. Those represent in part

the loss by that line experienced by reason of the cut-off. They do not represent the whole loss, because the traffic level of the system had increased during those two years, but in spite of that increase, those losses still appear in the traffic handled by that line east of Dotsero, and we will submit some figures to show in dollars and cents exactly what that meant to the earnings of that particular portion of line, but this shows you physically part of what it amounts to.

Examiner Kirby: Was not the Dotsero cut-off in operation during a part of the year 1933?

The Witness: No, sir, that was opened June 15th, 1934.

Mr. Nicodemus: We offer the chart for 1933 in evidence.

Examiner Kirby: The chart for 1935 has been received as Exhibit No. 21. Is there objection to proposed Exhibit No. 21-A and 21-B?

(No response.)

Examiner Kirby: If not, the density chart for the year 1934 is received as Exhibit No. 21-A and the traffic density chart for the year 1933 is received as Exhibit No. 21-B.

[fol. 834] (Exhibits Numbers 21-A and 21-B, Witness Wyer, were received in evidence.)

Mr. Hoffman: May I ask a question Mr. Wyer?

Mr. Wyer: Yes, sir.

By Mr. Hoffman:

Q. Do these charts or will any subsequent charts about which you will testify, indicate in any way the amount of traffic originated by the Denver on its own road and destined to points on its own line?

A. There will be the converse of that, there will be the traffic interchanged by the Denver with other roads, and I will give you figures as to the total traffic handled by the Denver, so that you can get the figure which you want by subtracting the two.

Q. Also you will have figures originated by the Denver and delivered to other lines?

A. Yes, and also originated by other lines and delivered to the Denver.

Mr. Hoffman: Thank you.

Mr. Nicodemus: Mr. Examiners, we also offer a similar chart for 1932 and 1931. These will take Exhibit Numbers

21-D and C. I think there is nothing to be said about those earlier exhibits, is there, Mr. Wyer?

The Witness: No, sir, I do not think there is anything which need be said about those. They speak for them-
[fol. 835] selves.

Examiner Kirby: If there is no objection, the traffic density chart for the year 1932 is received as Exhibit No. 21-C and the traffic density chart for the year 1931 is received as Exhibit No. 21-D.

(Exhibits Numbers 21-C and 21-D, Witness Wyer, were received in evidence.)

By Mr. Nicodemus:

Q. Mr. Wyer, have you a statement showing the freight traffic handled by commodities over a period of years, and, if so, what period is covered by this statement?

A. Yes, I have. I have such a statement covering a period of years, 1928 to 1935 inclusive, showing the cars, tons and revenue to the Denver and Rio Grande Western on each of the important classifications of traffic.

Q. That is in two sections one for the Denver and Rio Grande Western and one for the Denver and Salt Lake?

A. Yes, I have an Exhibit covering each of the properties.

Mr. Nicodemus: We have copies of those and will tender them as Exhibits Numbers 22 and 22-A, and I will ask the witness if he has any comments to make on them.

The Witness: I think that this would be the best point to
[fol. 836] say a little bit about where the principle commodities, as shown on Exhibit No. 22 originate, and how they move, so as to give you a picture of the distribution of these commodities over the system, and if you will refer to Exhibit No. 22 in connection with Exhibit No. 21, I think that will be a convenient way of handling it.

From Exhibit No. 22 you will note that the principle revenue-producing-commodity on the Denver and Rio Grande Western is coal and coke which accounted for a revenue of $3,315,000.00 in 1935.

I have already pointed out some of the principal originating territories for this commodity, which is in and around Helper, and that movement is nearly all west to Salt Lake Valley, and to connecting lines at Salt Lake and Ogden.

The other principal originating coal fields are in Southern Colorado, in and around Walsenburg, which is directly south of Pueblo. There are fairly extensive mines in the Walsenburg territory, and also coal mines all the way south from Walsenburg through Rouse, down to Trinidad and Bon Carbo.

There are also a couple of mines just west of Walsenburg, near the place shown as Tropic, and a branch running north of Walsenburg to Alamo, which is entirely a coal-producing [fol. 837] branch. That coal goes principally north to Pueblo and Denver and points east of those junctions in Colorado, Kansas and Nebraska.

Then there are some smaller coal fields near Colorado Springs. There is one fairly large mine there. There is coal near Canon City, which is about 40 miles west of Pueblo. The branches serving Chandler and Fremont are coal branches.

There is coal on the narrow gauge, as I have already pointed out at Crested Butte. That is what we call anthracite coal. I do not think it quite compares with the Pennsylvania anthracite, but it is much the hardest coal produced anywhere in the Rocky Mountain region, and that is why it is worth while to haul this coal out over narrow gauge lines at extremely great cost, carry it over Marshall Pass and bring it east from Salida.

Mr. Hoffman: You spoke of the narrow gauge line at Crested Butte, and I would just like to ask about the line between Pueblo and down through Mustang down there, where the heavy traffic is. Is that narrow gauge or standard gauge?

The Witness: Standard gauge.

Mr. Hoffman: Standard gauge?

The Witness: That line is a joint double track, one [fol. 838] track of which is owned by the Denver and Rio Grande Western, and one which is owned by the Colorado and Southern.

Mr. Hoffman: Is that the only standard gauge?

The Witness: I have already outlined exactly where the narrow gauge lines were, and everything else is standard gauge.

Examiner Kirby: You have a map already presented showing the narrow and standard gauge?

The Witness: Yes, sir, Exhibit No. 7, I think it is, shows the narrow gauge lines exactly, and I have already covered it orally.

Another important class of traffic is refined petroleum, principally gasoline. That accounted for $880,000.00 of revenue in 1935. Most of this is received from points off line and moves to local points on the system. About half of that comes from refineries in California and moves east on to the system, or from refineries in Wyoming, the Casper Field, moving on to the system through Denver.

There are also refineries on the system which originate the other half of this traffic, located at Salt Lake City, which moves east at Denver, at Florence, which is just west of Pueblo on the main line, and at Farmington, New Mexico, [fol. 839] which is on the narrow gauge south of Durango, the very southwestern corner of the narrow gauge. The Farmington refinery serves the narrow gauge territory.

Then, of course, there are other products of mines.

Examiner Boyden: Just a minute before leaving the oil. Where does the oil from Farmington move to? Denver?

The Witness: That is gasoline. It moves principally to the local narrow gauge territory. None of it comes on to the standard gauge. It just serves that narrow gauge country.

The classification which is shown on Exhibit No. 22 as "Other Products of Mines," which includes ores and concentrates, accounted for a little over $2,000,000.00 of revenue in 1935, and that is scattered very generally over the system.

The Utah production is on the Silver City Branch and the Goshen Valley is one of the lines serving metal mines in that territory. The Park City Branch has mining activity on it. In fact, those two branches are operated almost exclusively to serve the mines.

The branch to Bingham serves a copper mining territory there.

And in Colorado around Leadville on the standard gauge, [fol. 840] between Salida and Minturn and around Silverton on the narrow gauge northeast of Durango are the principal mining sections.

There is also mining activity at a great many points in smaller amounts in Colorado and Utah.

Examiner Boyden: How does the production of mines in Utah move? Does that move to Salt Lake City?

The Witness: The production of mines in Utah almost all moves to the smelters in the Salt Lake Valley. That would be at Midvale, Garfield and Murray, in between Midvale and Salt Lake City. Midvale is just ten miles south of Salt Lake on the main line, and Garfield is directly west of Salt Lake City on the branch. There is another small smelter in between Salt Lake City there, and at Murray, which is a larger smelter.

There is usually a smelter operating in Leadville and at times there is a smelter operating at Durango. Of course, the Leadville smelter gets his ore from that territory, and Durango gets its ore from the Silverton territory.

There is a cyanide mill at Colorado City, near Colorado Springs, out on the Manitou Branch, which gets traffic from other lines than the Denver.

Then the fresh fruits and vegetables, included in the products of agriculture, originate at a good many points [fol. 841] on the system. There is a large originating territory south and east of Grand Junction, around Palisade, which is on the Rio Grande Junction Railway just east of Grand Junction, and between Delta and Somerset on the standard gauge line south and east of Grand Junction. There is also a good deal of this traffic which originates in the Salt Lake Valley, all through the valley, all the way up to Ogden and down on the Marysvale Branch, which is a long branch running south and a little west from Thistle, on the main line.

Then there is also a fairly large volume of traffic which originated in and around Canon City, between Pueblo and Salida, and in the San Luis Valley, which is around Alamosa. Most of that traffic moves east, wherever it originates. It goes to the main line and goes east. The San Luis Valley traffic comes to Alamosa and is concentrated there and moves east up to Pueblo and Denver over the standard gauge lines.

Then there is a great deal of this character of traffic which originates in California and is brought east by connecting lines, Salt Lake City and Ogden, and delivered there and moved east over the main line either to Pueblo or Denver, and the majority of that is given to connecting lines at those points. Some of it, of cou-se, is for local consumption.

[fol. 842] Then we have livestock, which is another important commodity. In 1935 it accounted for nearly one million dollars of revenue, and that originates practically everywhere on the system. The heaviest loading points are at Rifle on the east end of the Río Grande Junction Railway, and then south of Grand Junction at Delta and Montrose, and in Utah there is a very heavy natural shipping point at Heber, which is on the Heber Branch. Heber is directly south of Park City, and the branch joins the main line at Provo, which is south of Salt Lake City.

Then there is also a good deal of cattle loading on the Marysvale Branch and in the Salt Lake Valley. There is hardly anywhere on the system where you do not load cattle. That nearly all moves east to the stock yards at Denver, the stock yards at Omaha or at Kansas City, but it is almost entirely an eastbound movement.

Examiner Boyden: If it goes to Omaha, I suppose you would lose it at Pueblo. Is that correct?

The Witness: Omaha business would probably be lost at Denver. It would probably come to Denver. Kansas City business would likely come to Pueblo.

Examiner Kirby: Is there any kind of a stock yard at Grand Junction for collection purposes?

The Witness: They are just local yards for feeding and [fol. 843] that sort of thing. There is no slaughtering at Grand Junction.

Examiner Kirby: A collection yard?

The Witness: Yes.

Lumber is a fairly important commodity. That provided nearly one million dollars of revenue in 1935, and the greater part of that originates in the Pacific Northwest and comes over the main line, being handled to the Denver by connections on the west, and taken from it by connections on the east.

There is a small amount of local lumber which originates on the narrow gauge in southwestern Colorado, but that is not very important.

Then the item of potatoes furnished $425,000.00 worth of revenue in 1955. By far the largest originating territory for that is the San Luis Valley around Alamosa and on the Creede Branch west of Alamosa. That figure was very low in 1935. I will have a little more to say about that later on. If you will look back at some of the earlier

years, you will see that the potatoe revenue was higher than that, being $592,000.00 in 1934 and $592,000.00 in 1935.

Besides the San Luis Valley, there are some potatoes originating around the Grand Junction territory and in the Salt Lake Valley, but the principal movement is from [fol. 833] the San Luis Valley.

Canned goods is also important. I think that is lumped in this statement in "Other Manufactures and Miscellaneous."

Examiner Kirby: Packing House Products?

The Witness: No, it would not be under packing house products. I think under Manufactures and Miscellaneous, the last item in the Manufactures and Miscellaneous, that *that* includes the canned goods. That ordinarily accounts for one-half million dollars a year, or a little more, and the largest movement of that is from California over the main line to eastern connections, but there is a very substantial local movement from canning factories in Utah, which moves east over the main line, and there are also some factories at Delta and Grand Junction which move east from there.

Sugar traffic in 1935 earned $451,000.00 of revenue, and that originates in the Salt Lake Valley, principally, moving east from there, and also originates around Grand Junction and moves east from there. There is also some sugar handled from California.

I have tried to give you that outline of the principal commodities because it is used later in the development of our formula for allocating the earnings of the property [fol. 845] to the different mortgage districts. This analysis which I have forecast for you was the basis for a decision which we arrived at to allocate the earnings on a ton mile basis, with certain modifications which I will explain to you when we get to the formula.

If you will recall, all the principal classes of traffic which I have just described to you, the coal and other mining traffic, fresh fruits and vegetables, livestock, lumber, potatoes, canned goods and sugar, all these move over the whole of the main line or they originate at various parts over the system, so that their movement is very well diversified over the whole system. The only minor exception to that is the potatoes which originate principally in the San Luis Valley and move over from there, but all of these other commodities move on all of the different mortgage districts.

So that every mortgage gets the benefit of tonnage made up practically of all of these principal commodities, and we felt that that being the case, it was fair to do what I shall describe to you in detail later, that is, allocate the bulk of the revenues on this property to the mortgages on a ton-mile basis.

Examiner Boyden: There has been a recent development of oil traffic from California, has there not, quite a considerable development?

The Witness: I did not think it was very large, no— [fol. 846] not by this road.

Examiner Boyden: There has been quite an increase in oil production in California, has there not?

The Witness: Yes, sir.

Examiner Boyden: Do you recall when that began to take place?

The Witness: I do not know, because that would be principally in Southern California, and I did not know that this road was getting any of that. I should think it would come by other routes.

Examiner Boyden: Would it not affect your coal traffic?

The Witness: I have not heard of any effect on the coal traffic in this territory.

Examiner Boyden: You do not know when that development took place in California?

The Witness: No, I know generally that there has been an increase in oil production in California. That might affect a little the coal traffic moving west out of Helper, to the extent that it went to California points, but I have not heard of any effect on that movement. That would be the only place where I could see that it would be likely to affect this, and, as I say, I do not know of any such effect. I have not heard of it.

Mr. Hoffman: Mr. Wyer, reserving the point for the mo- [fol. 847] ment, do I correctly understand you to say that in substance the plan endeavors to allocate to securities on the basis of the revenues derived from the various parts of the system, using a ton-mile basis?

The Witness: Yes, sir.

Mr. Hoffman: Irrespective of the dollar price paid which is received for the product?

The Witness: I will explain that more in detail when I get to the formula which allocates the revenue, but I wanted to explain or give this summary of the principal

commodities and their movement, because that is of importance when we arrive at that point in explaining why we adopted the particular method which we adopted then, and it seemed proper to include that here because you have the specific exhibits which are pertinent before you right at this time.

Mr. Hoffman: I just wanted to know whether I understood you correctly. That is all.

By Mr. Nicodemus:

Q. Your explanation indicates that there is no statement necessary on the Denver and Salt Lake Railway Company, because you have no mortgage problems there, but perhaps you would like to make a statement about the Denver and Salt Lake.

A. The Denver and Salt Lake situation is pretty simple. If you look at 1935, you will see that out of a total revenue [fol. 848] of $2,074,000.00, they earned $1,284,000.00 on bituminous coal, or over 60 percent, and that originates, if you look at the same mortgage map again, Exhibit No. 21, west of Orestod on the Denver and Salt Lake, principally around a place called Hayden, which is between Orestod and Craig, and is brought east to Denver and used either at Denver or delivered to connections at Denver.

Their next largest commodity is petroleum, $239,000.00 earned on crude petroleum in 1935 and $166,000.00 on refined petroleum. That all originates, or nearly all, at Craig, there being a refinery at Craig, and oil production near that point comes east, partly to Denver but partly to Orestod, fro mwhich it is handled west over the cut-off and over the Denver and Rio Grande Western to local points on that line, and the crude is handled as far as Salt Lake City, and the gasoline being handled principally to local territory on the Denver and Rio Grande Western.

There is one effect of the cut-off which has been to increase the shipments of that gasoline very substantially, because formerly the territory east and west of Dotsero, if it received gasoline from Craig, had to receive it around through Denver. Of course, the crude to Salt Lake City [fol. 849] moved that way around through Denver. So that that has increased those shipments by reason of the cut-off. I think that that is all that is pertinent on the Denver and Salt Lake.

Mr. Hoffman: May I ask a question on that?

Referring to this item of coal, for instance, which produces $1,284,000.00 for the Denver and Salt Lake in 1935, did the same ton of coal that produced revenue for the Denver and Rio Grande in that column, where we have the $3,315,000.00 on Exhibit No. 22, produce revenue for both roads?

The Witness: No, I do not think there would be any duplication of coal tonnages between the two roads.

Mr. Hoffman: Not a duplication, but I mean, if there were a continuous movement of coal over the Denver system and the Denver and Salt Lake System, so that the rate was allocated between the Salt Lake and Denver, would the same ton of coal produce revenue for both roads?

The Witness: No, I do not think there would be any of that. The Denver and Salt Lake Coal, as I have explained, comes east from Hayden and that territory, into Denver and is used locally there or delivered to connections in Denver, moving east and north. I do not think that very much of it would move south out of Denver over the Denver and Rio Grande Western, because it would have to compete [fol. 850] with the coal coming up from Walsenburg on the Denver and Rio Grande Western's own rails, and there would be very little of the Denver and Salt Lake Coal which would be used on the Denver and Rio Grande Western south of Denver. There might be an occasional car that would go there, and there might be an occasional car which would move south from Orestod over the cut-off, but it would be practically negligible.

Mr. Hoffman: Other than coal, would the other commodities substantially contribute to the revenue of both roads?

The Witness: I have just described the situation on the crude oil, and gasoline, and that is true in that case. That is the only commodity that is very much interchanged between the two roads.

Mr. Hoffman: As to the rest, would you say that it was not particularly substantial?

The Witness: Yes.

Mr. Nasmyth: Mr. Wyer, these statistics which we have been discussing have been used as a basis, I understand, for arriving at your valuation of the proposed securities, as compared with the present securities? Is that right?

The Witness: These are part of what has been used. [fol. 851] You have not seen it all yet, but they will gradually unfold.

Mr. Nasmyth: But is this a fair comparison of what is likely to be in the future over the same period of years?

The Witness: I think you had better wait until you get it all before you ask that question. I will be very glad to answer it later.

Mr. Hoffman: To pursue my question one step further, would not the last answer which you gave to me indicate that the interchanged traffic between the cut-off and the Western Division was very nominal, and to that extent the cut-off contributed little to the Western Division? In other words, if there is no interchange of traffic, why the same kind of traffic contributed earnings both to the D. & R. G. W. and to the Denver and Salt Lake, would not that minimize the importance of the cut-off?

The Witness: No, because you are talking about one of the very minor reasons for constructing the cut-off.

Mr. Hoffman: I am just trying to get some information.

The Witness: The cut-off was constructed primarily to shorten the distance between Denver and Salt Lake for the Denver and Rio Grande Western. By shortening that distance 173 miles, it put the Denver and Rio Grande Western [fol. 852] in a position to compete much more effectively for transcontinental traffic. That was the primary purpose of the construction of the cut-off. There were a number of incidental advantages which arose out of that, one of which was that it increased the interchange of crude oil and gasoline between the Denver and Rio Grande Western and the Denver and Salt Lake at Orestod, and additional traffic arose out of that.

It also gave very much better service to the so-called western slope of Colorado, the territory around Grand Junction and all of the local territory west of Dotsero got very much quicker service into Denver and from there on east. But the primary reason, without which the cut-off would not have been built, was the enabling of the Denver and Rio Grande Western to handle competitive transcontinental traffic, and that is so much more important than is the interchange between the Denver and the Salt Lake and the Denver and Rio Grande Western of crude oil and gasoline, that you have got to value the importance of the cut-off from that and not from one of the minor factors.

Mr. Hoffman: I was not limiting myself to any particular class of traffic. I wanted to know whether, in substance, other than coal, to which you testified, anything originated on the Denver and Salt Lake Lines, the same ton of traffic [fol. 853] contributed revenues to the D. & R. G. W., and to the Denver and Salt Lake, and I understood your answer was in substance "No". Is that correct?

The Witness: My answer is in the record, and I think it will speak for itself.

Mr. Hoffman: We are trying to elicit the information. Is it a fact? Do you have any objection to answering the question?

The Witness: Will you read the question, Mr. Reporter?

(Question read.)

The Witness: Your question is improperly stated because it does not say what I had already testified to at all. I said as to crude oil and gasoline, there was a substantial interchange between the two roads and that contributed to the revenue of both roads. I said as to coal, there was not, but other than as to crude oil and gasoline, there is not a substantial interchange.

Mr. Hoffman: Am I correct in substance in assuming that the cut-off contributes little, if any, to the Denver and Rio Grande Western at the present time, at least other than the contribution which is created by the crude oil and gasoline?

The Witness: No, you are not correct in assuming that.

Mr. Hoffman: What are the facts?

[fol. 854] The Witness: I just got through telling you what the principal reason was for constructing the cut-off.

Mr. Hoffman: Frankly I do not understand your answer.

The Witness: I told you that the volume of traffic that the Denver had secured by reason of the cut-off—and I am speaking now of competitive transcontinental traffic—is so much greater than the revenue, and the revenue from it is so much greater than the revenue involved in interchange between the Denver and Rio Grande Western and Denver and Salt Lake that that is the most important factor in the construction of the cut-off.

Mr. Hoffman: Then it is correct that the same ton of traffic contributes revenue both to the Denver and Salt Lake and to the Denver and Rio Grande Western; is it not?

The Witness: No, because the traffic which the Denver and Rio Grande Western handles—I think I see your trouble—the traffic which the Denver and Rio Grande Western handles over the Denver and Salt Lake does not contribute any revenue to the Denver and Salt Lake. The Denver and Rio Grande Western gets all of that revenue. They pay the Denver and Salt Lake a rental for the use of that line, and they pay for it on a wheelage basis, but the revenue on that is collected by the Denver and Rio Grande [fol. 855] Western and it does not contribute anything to the revenue of the Denver and Salt Lake, but that increased traffic contributes very heavily to the revenue of the Denver and Rio Grande Western, and that increased traffic could not be handled without the cut-off.

Mr. Hoffman: You say they pay the Denver and Salt Lake on a wheelage basis?

The Witness: Yes, sir, for maintenance of way and transportation expense.

Mr. Hoffman: You had the agreement here before. What does that mean?

The Witness: Wheelage is usually computed by counting the car miles and the percentage of car miles handled by the Denver and Rio Grande Western as compared with the percentage handled by the Denver and Salt Lake, and the total expense in that territory for maintaining this track is divided in proportion to the car mileage.

Mr. Hoffman: Irrespective of the contents of the cars?

The Witness: Yes, sir.

Mr. Hoffman: And irrespective of normalcy of traffic?

The Witness: I do not know just what you mean by that. You count the cars and divide the expense that way, and there is a minimum in this contract below which the D. and R. G. W. contribution cannot fall, but with that quali- [fol. 856] fication it is divided exactly in accordance with the number of cars that the two roads handle.

Examiner Kirby: We will take a short recess.

(Thereupon a short recess was taken.)

Examiner Kirby: All right, gentlemen, let us proceed. Have you finished your explanation on Exhibits Numbers 22 and 22-A, Mr. Wyer?

The Witness: Yes, sir, I have.

Mr. Nicodemus: Mr. Examiner, I will now make another offer of Exhibits 22 and 22-A.

Examiner Kirby: You are now offering them in evidence?

Mr. Nicodemus: Yes, sir.

Examiner Kirby: Is there any objection to the receipt of these Exhibits Numbers 22 and 22-A?

(No response.)

Examiner Kirby: If not, the Exhibit showing freight traffic handled on the Denver and Rio Grande Western System is received as Exhibit No. 22, and the Exhibit entitled "Revenue Freight Carried Years 1928 to 1935", on the Denver and Salt Lake Railway Company, is received as Exhibit No. 22-A.

(Exhibits Numbers 22 and 22-A, Witness Wyer, were received in evidence.)

By Mr. Nicodemus:

Q. Mr. Wyer, have you prepared a statement showing the interchange of traffic between the Debtor and its prin-
[fol. 857] cipal connections?

A. Yes, I have.

Q. What is that shown in? In tons?

A. This first exhibit is shown in tons, yes, sir.

Q. That also is in two sections, one for the Denver and Rio Grande Western, and another for the Denver and Salt Lake?

A. Yes, sir.

Q. Have you any comments to make upon these two statements?

A. Yes, sir. The first page shows the interchange between the D. & R. G. W. and its principal connections for the years 1934 and 1935 inclusive, and the upper half of the sheet shows the tons received by the D. & R. G. W. from its connections, and the lower half shows the tons delivered by the D. & R. G. W. to its connections.

You will notice that of the tonnage received by the D. & R. G. W. that the Western Pacific, one of the two roads owning the capital stock of the company, delivered more tonnage to the D. & R. G. W. than any other company. In 1935 it delivered 502,000 tons. The next largest amount was delivered by the Southern Pacific, also a western connection. Of the Eastern connections, the Missouri Pa-
[fol. 858] cific, the other road owning 50 per cent of the

capital stock of the company, delivered more tonnage than any other eastern connection, 291,000 tons.

The next largest delivery was by the Burlington, 113,000 tons, and the next largest by the Union Pacific, 93,000 tons.

The deliveries by the Missouri Pacific were practically equal to the combined deliveries of the Burlington, Rock Island and Union Pacific put together, those being the next three largest connections on the east.

On tonnage delivered by the Denver, the largest delivery is to the Missouri Pacific, 615,000 tons in 1935, and the second largest is to the Western Pacific, 611,000 tons.

Mr. Fisher: May I ask a question about that exhibit?

The Witness: Surely.

By Mr. Fisher:

Q. While it is relatively small, you did not put on the tons received and delivered to the Denver and Salt Lake, for instance, the gasoline tonnage delivered for the year 1935?

The Witness: No, we did not.

Q. Would that be materially smaller than the smallest one of the others? I presume it would be.

A. Yes, sir, it would be. I will have some figures later [fol. 859] on as to what that is, in connection with the discussion of the effect of the cut-off in detail, but it would be pretty small compared with these figures.

Examiner Boyden: Would it be much of a job to break down the Exhibit No. 23 statement into a statement of tons interchanged at each location? You must have had that information to work it up.

The Witness: I do not think it is compiled that way. We have the Hollerith Machine Cards in the Auditor of Freight's Office, and the connecting line is punched on the cards, and when they sort the cards, it is sorted by connecting lines. I can tell you pretty nearly where the interchange is. But, for example, with the Santa Fe interchange it is practically all at Pueblo or Trinidad, mostly at Pueblo. With the Burlington, of course, it is all at Denver. With the Rock Island it is both at Denver and Colorado Springs, with the majority of it being at Denver. With the Colorado and Southern it would be either at Denver, Pueblo or Trinidad principally. It might be at

other points too. There are a number of interchange points with the Colorado and Southern. That is about the only one where I could not tell you where the preponderance of it would be. Walsenburg is also an important interchange point for the Colorado and Southern, because freight [fol. 860] comes over from Alamosa and is delivered to the Colorado and Southern at Walsenburg for Texas points.

The Missouri Pacific, of course, is all at Pueblo. The Union Pacific east is all at Denver. The Union Pacific west is principally at Ogden, going north into the northwest, but there would be some at Provo going to Southern California, at times the Provo interchange has been very heavy. The principal interchange, however, would be westbound coal which is delivered principally at Ogden. The Southern Pacific is entirely at Ogden and the Western Pacific is entirely at Salt Lake.

Examiner Boyden: You- statement applies to the tons received and tons delivered?

The Witness: Yes, sir, that is true in both directions.

Mr. Ewing: Mr. Wyer, may I ask a question? Speaking of the Rock Island traffic, do you get more at Denver or Colorado Springs?

The Witness: More at Denver.

Mr. Ewing: Substantially more?

The Witness: Yes- more now. Of course, before the construction of the cut-off, we got practically nothing at Denver, and got it all at Colorado Springs, but that is not true now.

Examiner Boyden: If we asked for that information [fol. 861] to be broken down actually, would it be much of a job?

The Witness: Yes, it would be a pretty big job. They would have to go back to the original way-bills to do it, or would have to re-sort their cards at best, and I do not think they could do it.

Mr. Nicodemus: Would it, in your opinion, be a serviceable job?

Examiner Boyden: That is a matter of opinion.

Mr. Nicodemus: Of course, if you think it is important, we can endeavor to do it.

The Witness: I can make an investigation and find out just how much work it would be.

Examiner Boyden: Please do that and let us know.

The Witness: If we find it is easily done, we can do it.

Examiner Boyden: If it is not going to be very difficult, I would like to have that information in the record.

Examiner Kirby: Is there objection to the receipt of this statement? If not, it is received as Exhibit No. 23.

(Exhibit No. 23, Witness Wyer, was received in evidence.)

By Mr. Nicodemus:

Q. Now, Mr. Wyer, turning to the Denver and Salt Lake, [fol. 862] have you any comment to make on this statement?

A. No, sir, I have not. The Denver and Salt Lake advised us that they did not keep that information separated by carriers, so that we could not show the breakdown on it.

Examiner Boyden: It would be a case there of going back and shuffling the cards, is that right?

The Witness: Yes, sir.

Mr. Nicodemus: We offer the statement pertaining to the traffic interchanges between the Denver and Salt Lake and its connections, as Exhibit No. 23-A.

Examiner Kirby: Is there objection to its receipt?

(No response.)

Examiner Kirby: If not, it is received as Exhibit No. 23-A.

(Exhibit No. 23-A, Witness Wyer, was received in evidence.)

By Mr. Nicodemus:

Q. Mr. Wyer, you referred a few moments ago to the overhead traffic. Are you now prepared to explain that by reference to an exhibit?

A. Yes. I prepared an exhibit showing for the year ended June 30, 1935, the details of the overhead traffic. By the overhead traffic I mean traffic which originates on some connection east of the Denver, for example, moves over the [fol. 863] Denver and is delivered to some connection on the west. It neither originates or terminates on the Denver, but the Denver is dependent for this traffic upon its relations with other lines and upon the service which it gives in competition with other transcontinental lines for this business. This is the most highly competitive traffic which the Denver handles and this shows, by points, the overhead traffic.

The reason I think that they may not have the other by points is that the overhead traffic has been compiled this way, but I am not sure that all interchange has been compiled this way because they make separate compilations of the overhead traffic and always have. But this shows the interchanges at Provo, Salt Lake City and Ogden on the west, and shows the railroads on the east to which they are delivered.

You will notice here on the traffic received from eastbound connections, again the Missouri Pacific delivered freight to the Denver which gave a revenue of $614,000.00. That was the largest amount of any eastern connection. Of that $614,000.00, $471,000.00 was earned on through traffic which went to Salt Lake City and was delivered to the Western Pacific at that point; and $101,000.00 was on traffic which went through to Ogden and was delivered to the Southern Pacific there, and $41,000.00 was on traffic which went [fol. 864] through to Provo and was delivered to the Union Pacific at that point.

In the other direction, take traffic received from the Western Pacific at Salt Lake City, and the Denver earned on that revenue of $1,618,000.00, and of that the majority of it, $849,000.00 was carried through to Pueblo and delivered to the Southern Pacific at that point.

You will notice in each case that the majority of the Missouri Pacific's interchange was delivered to the Western Pacific and in the case of the traffic received from the Western Pacific the majority of that was delivered to the Missouri Pacific on the east.

The rest of the Missouri Pacific Traffic was divided $294,000.00 to the Burlington, $226,000.00 to the Rock Island, $153,000.00 to the Santa Fe, and $70,000.00 to the Union Pacific, and $24,000.00 to the Colorado and Southern.

You can get from that the total traffic received and delivered from each important connection, and it shows you which other connection it goes to or comes from. That of course, as I say, is the most highly competitive traffic, and the traffic that can be lost the most easily by the Denver.

The total revenue earned was $5,754,000.00 in this year, and this particular year, as I have explained, was chosen because we are basing our mortgage earnings on this [fol. 865] year which was the first year after the opening of the cut-off.

Mr. Fisher: May I ask what "O. S. L." is, under Salt Lake delivered to?

The Witness: Oregon Short Line, a part of the Union Pacific, of course.

Mr. Nicodemus: I offer the statement in evidence.

Examiner Kirby: Is there object to its receipt?

(No Response.)

Examiner Kirby: If not, it is received as Exhibit No. 24.

(Exhibit No. 24, Witness Wyer, was received in evidence.)

Mr. Hoffman: May I ask a question in connection with that exhibit, Mr. Wyer?

The Witness: Surely.

By Mr. Hoffman:

Q. Do I correctly understand that you received from the Southern Pacific, according to Exhibit No. 24, $1,527,000.00 of revenue which you delivered, and set forth in that schedule?

A. Yes, sir, that is correct.

Q. And that represents 424,000 tons, as set forth on Exhibit No. 23, is that correct?

A. No, Exhibit No. 23 covers all tonnage received from the Southern Pacific. This covers only such tonnage re- [fol. 866] ceived from the Southern Pacific as was delivered to some other connection.

Q. I see. And Exhibit No. 23 includes tonnage destined to local points on the D. & R. G. W.

A. This only covers 382,000 tons. You see the figure alongside the $1,527,000.00 of revenue? The remaining 42,000 tons was evidently for local points on the line.

Q. It would require a calculation to find out in each instance what remained on the D. & R. G. W.?

A. Yes, sir.

Q. You have not got that calculation available?

A. No, I have not made that.

Q. Is my understanding correct that on the 382,000 tons delivered by the Southern Pacific it yielded $1,527,000.00? That is gross revenue, I take it?

A. Yes, sir.

Q. As compared with the $1,618,000.00 and 402,000 tons from the Western Pacific?

A. That is correct.

Q. Where is the tonnage from the Missouri Pacific?

A. That is under the right hand column in the second block next to the last line opposite Missouri Pacific Railroad, namely, $614,542.79.

Q. Representing 98,000 tons received?

A. Yes, sir.

[fol. 867] Q. Or delivered?

A. That is tonnage received from the Missouri Pacific.

Q. Sir?

A. That is tonnage received from the Missouri Pacific at Pueblo.

Q. Of which 74,000 found its way over the Western Pacific?

A. That is correct.

Examiner Kirby: Mr. Wyer, does this Exhibit relate only to the Denver and Rio Grande Western Railroad Company?

The Witness: Yes it does. Of course, the Rio Grande Junction and the Goshen Valley and the Denver and Salt Lake Western are all leased lines, so that they are included in these figures.

Examiner Kirby: But not the Denver and Salt Lake Railway?

The Witness: No, sir, that is not included.

Examiner Kirby: None of the traffic represented on this Exhibit came to rest on the Denver and Rio Grande?

The Witness: No, sir, none of it did. They got it from somebody else and gave it to somebody else.

Mr. Nicodemus: I offer the Exhibit.

Examiner Kirby: Is there objection to the receipt of this Exhibit?

[fol. 868] (No Response.)

Examiner Kirby: If not, it will be received as Exhibit No. 24.

(Exhibit No. 24, Witness Wyer, was received in evidence.)

* * * * * * * *

[fol. 869] Mr. Nicodemus: I would like to offer this summary now as an exhibit, and offer it as a summary and with the understanding that we are to follow it up by introduc-

ing the originals of the different mortgages that are summarized in this exhibit, reserving to all counsel the right to object to any legal conclusions that are set forth in the summary and which may not be supported by the mortgages, by the basic documents.

Mr. Hoffman: And with the understanding, Mr. Examiner, that this represents only the position of the Debtor, and that the failure to object to any of the testimony does not constitute an acquiescence in it.

Examiner Kirby: Well, I understand that it is being presented as the Debtor's evidence and their conclusions; is that correct?

Mr. Nicodemus: Correct.

Mr. Anderson: Subject to the reservations I have already made.

Examiner Kirby: Subject to the reservations noted. You may proceed.

Mr. Nicodemus: Well, we will introduce it and take it as exhibit 28.

Examiner Kirby: Subject to the reservations indicated by the various parties, the document relating to description of obligations is received as exhibit No. 28.

(Exhibit 28, Witness Wyer, received in evidence)

[fol. 870] The Witness: I will arrange to do that.

The next document which I would like to present is the First Trust Mortgage of the Rio Grande Western Railway Company to The Central Trust Company of New York, dated July 1, 1889.

Examiner Kirby: Do you offer that in evidence?

Mr. Nicodemus: We offer that in evidence.

Examiner Kirby: Is these objection to the receipt of the document just tendered?

(No response.)

If not, it is received as Exhibit No. 32.

(Exhibit 32, Witness Wyer, received in evidence.)

By Mr. Nicodemus:

Q. Now, Mr. Wyer, before you comment on that, if you wish to comment on it, have you any supplements to that mortgage?

A. Yes, sir.

Q. If so, how many?

A. There are five supplemental indentures which have been made in connection with that mortgage.

Q. Will you mention the dates of those supplemental indentures?

A. They are dated as follows, and as I give each date I will give a very brief summary of what the supplemental indenture covers, because we do not have copies for gen-
[fol. 871] eral distribution.

March 24, 1899, covered lands acquired in connection with the change of track from narrow gauge to standard gauge, and also covered 61.63 miles of constructed standard gauge railroad and telegraph line from Thistle to Manti, Utah, which is the north end of the Marysvale branch.

January 28, 1902,——

Mr. Nicodemus: One minute.

We offer the supplemental indenture of March 24, 1899, as exhibit 32-A.

Examiner Kirby: If there is no objection, it is so received.

(No response.)

(Exhibit 32-A, Witness Wyer, received in evidence.)

By Mr. Nicodemus:

Q. Go forward to the next one.

A. In connection with that, these supplemental indentures are bound together, perhaps you could offer them as one exhibit.

Examiner Kirby: They are bound in one document?

Mr. Nicodemus: Yes.

Examiner Kirby: I withdraw the ruling.

(Admission of exhibit 32-A, Witness Wyer, temporarily withheld.)

The Witness: The second supplemental indenture is dated
[fol. 872] January 28, 1902, and covered certain land in Carbon County, Utah.

The third supplement is dated December 20, 1924, and covered the assumption by the Denver & Rio Grande West-

ern Railway Company of the mortgage bonds outstanding under this mortgage in the hands of the public.

April 1, 1925, was the date of the fourth supplemental indenture and this covered an assumption by the Denver & Rio Grande Western Railroad Company of the obligations under the mortgage.

The description of that supplemental indenture on the summary page of this exhibit which I am going to present is slightly inaccurate. It describes it as "Assumption of mortgage bonds held in Treasury."

The important part of that supplemental indenture was the assumption of the obligations under the mortgage; it was done in order to make the mortgage bonds held in the Treasury an obligation of the railroad company.

Mr. Anderson: I suppose our reservation would apply to the expression of the legal opinion of the effect or purpose of the document?

Examiner Kirby: It does, yes; but if you wish in case you see a particular instance where you wish to note an objection, you may do so.

Mr. Anderson: I know from experience that Mr. Wyer is [fol. 873] a very accurate witness, but I do think that there are some very nice questions of law involved in this case as to these liens, and I would object to that statement specifically.

Examiner Kirby: Well, a general reservation has been made in regard to that character of testimony.

Mr. Anderson: But I move that that particular statement as to the effect or purpose of that supplemental indenture be stricken, because it must be a conclusion, and I am sure that Mr. Wyer will limit his testimony accordingly so that I do not have to make these objections.

I move that that statement be stricken out now because I do not think it is appropriate in the record.

Examiner Kirby: Of course, the statement will speak for itself.

Mr. Anderson: And I think his statement of the legal effect is not admissible and I do not think it ought to be put in the record, because it is misleading, and I do not think Mr. Wyer intends to do that.

The Witness: I am perfectly willing to modify my statement to say simply that the description of the fourth supplemental indenture as shown on the summary sheet should

be changed to say, instead of "Assumption of mortgage bonds held in Treasury," it should say, "Covering assumption of obligations under the mortgage."

[fol. 874] Examiner Kirby: Who prepared the description in question?

A. It was prepared in my office, under my supervision.

Q. It is not a part of the document itself?

A. No, sir; this is simply a summary sheet describing these different supplemental indentures by date and a very brief summary of what they contain.

Mr. Nicodemus: This is the March 29, 1932, supplement?

A. No, sir; this is the April 1, 1925 supplement.

This same wording that I am now discussing appears on all the summary sheets of these supplemental indentures, and I want simply to change the wording in the description to agree with what I believe to be a more accurate description of the supplemental indenture itself.

Examiner Kirby: Then do I understand you to mean that you are now correcting your statement which you yourself had prepared?

A. Yes.

Examiner Kirby: With the reservation indicated by Mr. Anderson, the corrected statement as made by the witness may stand.

The Witness: The fifth supplemental——

Examiner Boyden: The request that the previous statement be stricken is granted.

Mr. Anderson: Now, off the record.

[fol. 875] (Discussion off the record.)

Examiner Boyden: The corrected statement is accepted, with the reservations, and the previous statement is stricken.

The Witness: The fifth supplemental indenture is dated March 29, 1932, and covered granting of authority to the Denver & Rio Grande Western Railway Company to sell or pledge the mortgage bonds issued under this mortgage and held in the Treasury at that time.

They aggregated $10,000 in amount.

By Mr. Nicodemus:

Q. Now, you also have a summary sheet, have you not?

A. The summary sheet is what I have been reading from,

and that has been distributed. The supplemental indentures themselves are attached to the summary sheet.

Mr. Nicodemus: Now, Mr. Examiner, in spite of the fact that these supplemental indentures are bound together, we would like to have them given separate exhibit numbers, so we offer the supplemental indenture of March 24, 1889 as exhibit 32-A; the supplemental indenture of January 28, 1902 as exhibit 32-B; the supplemental indenture of December 20, 1924 as exhibit 32-D, and the supplemental indenture of March 29, 1932, as exhibit 32-E; and we ask that the summary sheet be designated as exhibit 32-F.

And we offer each of those documents as a separate ex-
[fol. 876] hibit.

Examiner Kirby: Subject to the reservation already noted, the exhibits are received as offered.

(Exhibits 32-A, 32-B, 32-C, 32-E, and 32-F, Witness Wyer, were received in evidence.)

Mr. Hoffman: May I ask, off the record for a moment?

(Discussion off the record.)

By Mr. Nicodemus:

Q. Now, Mr. Wyer, the documents just received in evidence, exhibits 32 and 32-A to 32-F, inclusive, represent the security or relate to the security for the bonds designated in the Plan as "R. G. W. First Trusts (4 per cent)"?

A. Yes.

Q. Aggregating $15,190,000?

A. Yes.

Q. The second security in the table set forth in Section 4 of the Plan?

A. Yes.

In addition to the bonds shown in the table, there are $10,000 of these bonds which have been pledged with the Reconstruction Finance Corporation. They were the treasury bonds in connection with which the fifth supplemental indenture was made.

These bonds mature July 1, 1939. The interest rate is 4 per cent. They are a first lien on the main line of the
[fol. 877] D. & R. G. W., from Crevasse, which I pointed out on exhibit 7, the map, yesterday, as being near the Utah-Colorado state line, westward and northward to Ogden, the end of the line.

They are also a first lien on about a hundred miles of branch lines in Utah, and they are a first lien on a small amount of equipment.

Now, we shall have some exhibits later which deal with the equipment lien situation, and we have not attempted to describe that in detail in exhibit 28, because that is a very complicated question, and I shall just point out as I discuss these different mortgages, whether or not, generally speaking, they do have a lien on equipment.

By Mr. Nicodemus:

Q. Is that all you have to say with respect to those exhibits?

A. Yes.

Q. Will you pass to the next one which will be the Denver & Rio Grande Railroad Company first consolidated mortgage?

A. Yes.

I have here the original mortgage, designated, "Consolidated mortgage, the Denver & Rio Grande Railroad Company to United States Trust Company of New York, Trustee, dated July 15, 1886."

Q. That is not in sufficient numbers for distribution?

[fol. 878] A. No.

Examiner Kirby: Do you offer this as an exhibit?

Mr. Nicodemus: We offer that in evidence.

Examiner Kirby: Is there any objection?

(No response.)

The consolidated mortgage of July 15, 1886, is received as exhibit 33.

(Exhibit 33, Witness Wyer, received in evidence.)

By Mr. Nicodemus:

Q. Now, Mr. Wyer, do you have the same situation there as you had in the previous case, are there a number of supplements?

A. Yes, there are.

Q. If so, will you describe them, briefly?

A. I have them all bound together, in one document. I will describe them by date and description.

Mr. Nicodemus: And we would like to reserve a separate number for each of those, as we did in the previous case.

Examiner Kirby: That will be satisfactory.

The Witness: The first one, dated March 27, 1890, covered certain land at Pueblo, Colorado.

The next three all cover land in Arapahoe County, Colorado. They were dated April 14, 1890, January 26th, 1891, and May 20, 1891.

There is also a fourth supplemental indenture covering land in Arapahoe County, dated September 11, 1891.

[fol. 879] The next supplemental indenture was dated January 30, 1894, and covered land in Garfield County, Colorado.

The next supplemental indenture, dated June 9, 1916, covered land in El Paso County, Colorado.

On December 20th, 1924, a supplemental indenture was executed by the Denver & Rio Grande Western Railroad Company assuming the mortgage bonds in the hands of the public.

On April 1, 1925, the supplemental indenture covering the assumption of the obligations under the mortgage by the Denver & Rio Grande Western Railroad Company was executed.

Examiner Boyden: What was the date of that one—off the record.

(Discussion off the record.)

The Witness: And March 29, 1932, there was a supplemental indenture granting to Debtor company authority to sell or pledge the mortgage bonds held in the treasury.

Mr. Nicodemus: We offer those severally and I will give you an exhibit number.

Examiner Boyden: Off the record now.

(Discussion off the record.)

Examiner Kirby: Will you proceed to designate the individual exhibit numbers of the various supplemental indentures?

[fol. 880] Mr. Nicodemus: March 27, 1890, in exhibit 33-A; April 14, 1890 is exhibit 33-B; January 26, 1891 is exhibit 33-C; May 20, 1891 is exhibit 33-D; September 11, 1891, is exhibit 33-E; January 30, 1894 is exhibit 33-F; June 9, 1916, is exhibit 33-G; December 20, 1924, is exhibit 33-H; April

1, 1925, is exhibit 33-I; March 29, 1932 is exhibit 33-J. That is all.

Examiner Kirby: And the summary has been indicated as 33-K?

Mr. Nicodemus: 33-K.

Examiner Kirby: Is there any objection to the receipt of these supplemental indentures?

Mr. Hoffman: May I just ask a question, Mr. Examiner? On the summary sheet, 33-K, is that 33?

Examiner Kirby: Right.

Mr. Hoffman: Is indicated for exhibit 33-I as purporting to be an assumption of mortgage bonds held in the Treasury, whereas the witness testified it purported to be an assumption of the obligations of the mortgage, and I would like to have it made plain at this time just what the witness really intends to say that he thinks it is.

[fol. 881] Examiner Kirby: Will you please clarify that?

The Witness: The description on the exhibit, 33-K, should be as I gave it in my testimony. The same correction should be made on all these summary sheets as I first outlined in connection with the R. G. W. first trust mortgage.

The summary sheet describes the indentures dated April 1, 1925 as assumption of mortgage bonds held in treasury, and all of them should, I believe, describe those indentures as "Assumption of obligations under the mortgage."

Examiner Kirby: The supplements are received as exhibits 33-A to 33-K, inclusive, including the summary sheet.

(Exhibits 33-A to 33-K, inclusive, Witness Wyer, received in evidence.)

By Mr. Nicodemus:

Q. Mr. Wyer, have you any comments to make on those exhibits?

A. Those describe the security for the bonds which are described in Section 4, page 5, of the Plan as the D. & R. G. consols.

Those are the fourth and fifth items in the table of Present Capitalization.

There are $34,125,000 of the 4 per cent consols in the hands of the public, and $6,382,000 of bonds with a rate

[fol. 882] of 4½ per cent. All of the bonds are equally secured.

In addition to those in the hands of the public, there are $783,000 of these bonds pledged with the Reconstruction Finance Corporation and $662,000 of them pledged with the Railroad Credit Corporation, making a total in the hands of the public and pledged of $41,952,000.

These bonds are secured by first lien on the main line of the Denver & Rio Grande Western, starting at Denver, running south to Pueblo, west to Salida, north over Tennessee Pass to Dotsero and west to Rifle, Colorado, where the line connects with the Rio Grande Junction Railway.

Then at the west end of the Rio Grande Junction Railway, they are also a lien on about 18 miles of the line between Grand Junction and Crevasse, Colorado, where they connect with the line which is subject to the Rio Grande Western First Trust Lien.

Examiner Kirby: Mr. Wyer, all of these liens have been portrayed on a map exhibit?

A. Yes.

Examiner Kirby: Previously presented, are they?

A. Yes, they are all portrayed on the map.

Then this mortgage is also a first lien on the standard [fol. 883] gauge line south from Pueblo to Trinidad, and from Walsenburg on that line over LaVeta Pass to Alamosa, and up the Creede Branch to within a few miles of the end of that branch.

And they are also a first lien on practically all of the narrow gauge mileage.

The total mileage involved is 875 miles of standard gauge line and 683 miles of narrow gauge line.

They are also a first lien on a substantial amount of equipment, as will be set forth in a later exhibit.

Mr. Anderson: May I ask a question, off the record?

Examiner Kirby: Let's get this on the record.

Mr. Anderson: Have there been any substantial releases of property under any of the mortgages that you are now putting in?

A. No, no substantial releases.

Mr. Anderson: Would it be very much trouble to have a supplementing of the record with the releases that have

been executed under these mortgages so as to bring the property down to what is actually under them as distinguished from what was put under them? I think that would be much more accurate.

Mr. Nicodemus: I cannot remember a release under these underlying mortgages for many, many years.

Mr. Anderson: I would suggest that it would be better [fol. 884] and make it more accurate to file a summary as to those releases, as to what was covered.

Mr. Marsh: There have been quite a few abandonments of property authorized in connection with these properties. My recollection is that under schedule 5 I think something like six hundred thousand odd of book values are going to be wiped out in connection with the abandonment.

I presume that is part of the same exhibit. If there is going to be a summary of releases, it might be well to have a summary of abandonments.

Examiner Kirby: Do you contemplate presenting a statement of that character, relating to the abandonments?

The Witness: No, sir, I had not. I think I can explain what the situation is. Most of the releases under the mortgages would consist of small amounts of land which were being sold.

You would have some releases of lines of railroad; for example, the old Blue River Branch of the Denver & Rio Grande was originally under one of these mortgages, and it was abandoned and then released.

There have been other abandonments of line. To the extent that there have been abandonments of line, those lines have been eliminated from the mortgage map so that the mortgage map reflects accurately the lines of railroad [fol. 885] that are now subject to the lien of these different mortgages.

To the extent that the releases and abandonments have been of lands or facilities they are very minor. If you were to make a complete statement of all releases and abandonments, you would have a very voluminous document, more voluminous than the Form A which we discussed yesterday.

I do not think it would add anything to the case.

Examiner Kirby: Do the gentlemen press the request for that information?

Mr. Anderson: No, on that explanation; reserving the right, if we come across any reason why we should ask for

it, we may do so, but for the present the matter will not be pressed because I do not want to encumber this record with a mass of detail that has no particular place in the record.

All I want to get is a clear explanation of anything affecting the value of these securities.

Examiner Kirby: You reserve that?

Mr. Anderson: I reserve that for future discussion if I come across anything that ought to go into the record.

Examiner Kirby: Now, with respect to abandonments.

Mr. Marsh: That was tied up with the other. I think the book value of the abandonments would be considerably [fol. 886] more extensive than that of the releases. The present map eliminates property abandonments.

The Witness: Yes, it eliminates all the mileage abandoned.

Mr. Marsh: It eliminates all property abandoned, all mileage. Would that include possible abandonments since the proceeding started?

The Witness: Yes, it does.

For example, the Pagosa Springs Branch has been abandoned just recently and then has been eliminated from the map, and the figures of the Pagosa Springs Branch have been eliminated from the earning figures.

Examiner Kirby: Well, let us proceed.

By Mr. Nicodemus:

Q. Now, Mr. Wyer, have you finished with that mortgage?

A. Yes.

Q. Will you go from that westwardly to the old Rio Grande Western line?

A. The next mortgage is the Rio Grande Western Railway Company first consolidated mortgage, dated April 1, 1899.

Mr. Nicodemus: We are not submitting copies of that mortgage because it has been reproduced in full in the court record, at what page does it appear in the court record?

A. Page 806. There are, however, a number of supple- [fol. 887] ments to that mortgage which we have copies of here.

Mr. Nicodemus: Before you take up the supplements, let's get the mortgage in evidence.

We offer that by reference to the transcript of record, page 106, and ask that it be designated as exhibit 34.

Examiner Kirby: Is there objection to its receipt?

(No response.)

Examiner Boyden: Under the rules of the Commission, and in order to facilitate certification of the record to the court, I believe you should furnish a copy of it.

Examiner Kirby: Are you submitting a copy now for the record?

The Witness: No, we are not.

Mr. Nicodemus: It is already in the printed record, both of the court and of the Commission.

The Witness: We have assumed that they would be part of the evidence in this case.

Examiner Boyden: Through the stipulation at the beginning of the proceeding?

The Witness: Yes.

Examiner Boyden: All right.

Mr. Nicodemus: There seem to have been a flood of supplemental indentures to this mortgage, Mr. Wyer.

Examiner Boyden: Let me ask one question more:

[fol. 888] Q. Will you be able to furnish copies of those later on if you are requested to do so?

Mr. Nicodemus: We could, yes.

Examiner Kirby: You have offered the mortgage as exhibit 34, by reference to the court record.

Mr. Nicodemus: By reference to the record.

Examiner Kirby: As offered, it will be assigned exhibit number 34.

(Exhibit 34, Witness Wyer, was received in evidence, by reference.)

The Witness: The supplemental indentures to this mortgage, and their description, are as follows:

June 1, 1899; the supplement dated June 1, 1899 covered a change in the form of registered bonds issued under this mortgage.

That will be No. 34-A.

The supplement dated October 10, 1899, covered lands in Weber County, Utah, purchased from the Rio Grande Western Construction Company. That will be 34-B.

The second document dated October 10, 1899, submitted here, includes a deed to the same lands. That will be 34-C.

There was a third supplemental indenture dated October 10, 1899, covering specific pledge of $382,523.34 of equipment purchased from the Rio Grande Western Construc-
[fol. 889] tion Company. That will be 34-D.

The next supplement was dated January 19, 1900, and covered 11 miles of railroad in Utah County, Utah, purchased from the Rio Grande Western Construction Company; 34-E.

Mr. Anderson: Is any of that pledged under the mortgage still in existence?

A. Very little of it; it would be a small amount of it, but not much.

Mr. Anderson: Just a nominal amount of it?

A. Yes.

Mr. Anderson: That is all.

The Witness: The next supplement, dated January 29, 1900, covered 23.24 miles of railroad in Carbon and Emery Counties, Utah, purchased from the Carbon County Railway Company.

That constituted the Sunny Side Branch. 34-F.

The next supplement is dated January 30, 1900, and covered 15.00 miles of railroad in Utah and Wasatch Counties, Utah, purchased from the Utah Eastern Railway Company; 34-G.

The next supplement is dated March 19, 1901, and covered 3.25 miles of railroad in Salt Lake County, Utah, purchased from The Rio Grande Western Construction Company; 34-H.

[fol. 890] The next supplement was dated April 13, 1901, covered 2.42 miles of railroad in Utah County, Utah, purchased from The Rio Grande Western Railroad Construction Company; 34-I.

The next supplement is dated May 23, 1901, covers the pledge under this mortgage of the capital stock of the Utah Fuel Company. That carries with it a provision that the stock may be released from the pledge by payment of $6,000,000.

Mr. Hoffman: How much?

The Witness: $6,000,000.

There are six supplements dated July 20, 1908. They cover, respectively, the property of the Tintic Range Railway Company, 34-K; the Utah Central Railroad Company, 34-L; the Copper Belt Railroad Company, 34-M; the San Pete Valley Railway Company, 34-N; the Castle Valley Railway Company, 34-O; the Sevier Railway Company, 34-P. Those six supplements cover various branch lines in Utah which are, some of them, rather important in mileage.

They are all shown on the map to the extent that they are still in existence.

The next two supplements were dated January 21, 1910; and the first one covered the property of the Utah Eastern Railway Company, 34-Q; and the second one part of the property of the Carbon County Railway Company, 34-R; [fol. 891] The next supplement was dated February 13, 1929, covering certain lands in Salt Lake City, 34-S.

Now, there are three more supplements that are reproduced in the court records. The first of those was dated December 20, 1924, reproduced at page 895, covering the assumption of mortgage bonds in the hands of the public. That, I presume, will be 34-T.

Mr. Nicodemus: Correct.

The Witness: The next supplement, dated April 1, 1925, reproduced at page 897, covers the assumption of obligations under the morfgage; 34-U.

The next supplement, dated March 29, 1932, at page 903, grants the Debtor company authority to sell or pledge mortgage bonds held in the Treasury; 34-V.

Now, those last three supplements, which are, of course, important supplements and are reproduced in the court records, are typical of the corresponding supplements to all these mortgages that I have just described, as of the same dates, and being in the court record they will be available to everyone there.

In fact, they are described in the court record as being "typical" of the supplements to the other mortgages of the same dates.

By Mr. Nicodemus:

Q. And you have the usual summary which you des- [fol. 892] ignate as 34-W?

A. Yes.

Mr. Nicodemus: We offer all of those documents in evidence, severally.

Examiner Kirby: Is there objection to their receipt?

(No response.)

The documents generally described as supplements to the Rio Grande Western Consolidated Mortgage are received as offered and designated Nos. 34-A to 34-W, inclusive, including the summary.

(Exhibits 34-A to 34-W, both inclusive, Witness Wyer, were received in evidence.)

* * * * * * *

[fol. 893] By Mr. Nicodemus:

Q. Mr. Wyer, a few moments ago you spoke of a pledge of stock of the Utah Fuel Company; that stock is pledged under the mortgage that you have just introduced?

[fol. 894] A. Yes.

Q. Is there an agreement relating to the voting of that stock?

A. There is. I think perhaps before I introduce that, I ought to describe the security of this mortgage. I have not done that as yet.

Q. You have not?

A. No.

Q. Well, proceed, then, and describe the mortgage; I thought you had finished with that.

A. This Rio Grande Western Railway Company First Consolidated Mortgage, dated April 1, 1899, has outstanding under it in the hands of the public, $15,080,000 of bonds. They are shown on the third line of the table of present capitalization on page 5 of the Plan.

They are 4 per cent bonds. They mature April 1, 1949.

In addition to the bonds in the hands of the public, there are $1,396,000 pledged with the Reconstruction Finance Corporation.

They are a second lien on all of the mileage on which the R. G. W. First Trust 4's are a first lien, and they are also a first lien on 283 miles of scattered and disconnected branch lines in Utah, most of which are covered by these supple-

[fol. 895] mental indentures that I have just introduced.

They are also, as I stated, a first lien on the stock of the Utah Fuel Company and on a small amount of equipment.

Now, I have here an agreement described as agreement relating to the stock of Utah Fuel Company, dated December 20, 1924, between The Western Pacific Railroad Corporation, the Denver & Rio Grande Western Railroad Company, and the Missouri Pacific Railroad Company, and James S. Alexander, as trustee.

This agreement covers the voting of the stock of the Utah Fuel Company, creates a voting trust to handle such voting and provides as to the disposition of any dividends which may be declared on the stock of that company.

Briefly, the dividends go to the Denver & Rio Grande Western as long as there are any unpaid accumulated dividends on the preferred stock of that company, after which the dividends are payable to the Missouri Pacific and Western Pacific corporation.

There has been only one dividend on the stock of the company since the agreement was executed, that was for $250,000, and it was paid to the Denver & Rio Grande Western.

Mr. Nicodemus: We offer the agreement in evidence.

Examiner Kirby: The agreement relating to the stock of [fol. 896] the Utah Fuel Company, dated December 20, 1924, is received as exhibit No. 35.

(Exhibit 35, Witness Wyer, received in evidence.)

Mr Nicodemus: Proceed with the next one.

The Witness: Now, I also have a document which I have labeled "Description of Utah Fuel Company and subsidiaries." This consists of three pages, excluding the cover, and two attached exhibits or statements.

In order to acquaint everyone with the character of the property owned by the Utah Fuel Company, I have prepared this statement which summarizes the corporate history and describes the property, and it is accompanied by a six-year income account and a balance sheet of the Utah Fuel Company.

You will note from the income account that the company has operated at a deficit in every one of the past six years, the deficit ranging from $3,000 in 1935 to $160,000 in 1932.

From the balance sheet you will note that the company has no debt; has property carried at about fifteen million

dollars on the books, and has about a quarter of a million dollars of cash.

. . . . . .

[fol. 897] Mr. Sunderland: Mr. Examiner, representing the Trustee under the Consolidated Mortgage, under which the Utah Fuel Company stock is pledged, I would ask that this summary statement covering the Utah Fuel Company be marked at this time only for identification. This stock is subject to the first lien of the mortgage and we have made some study of the Utah Fuel Company; from a hasty examination of this summary statement it strikes me that I would prefer to have this marked only for identification, [fol. 898] to enable me to examine it further in connection with the investigation that we have made. It may be that we will, at a later time, permit it to go into evidence without objection, but I would prefer to have it simply marked for identification.

Mr. Nicodemus: We would ask a compromise with counsel, and have it accepted, subject to a motion to strike if at a later date he desires to take that course.

Mr. Sunderland: But I am not certain that this right to strike out is adequate protection for what I have in mind.

Examiner Kirby: You wish an opportunity to prepare for cross examination and to cross examine fully as to this exhibit.

Mr. Sunderland: I do.

Examiner Kirby: In view of the statement made by Mr. Sunderland, the exhibit is marked for identification, as exhibit 36. Ruling on the admissibility of the exhibit is reserved.

(Exhibit 36, Witness Wyer, was marked for identification.)

. . . . . .

[fol. 899] The Witness: The next mortgage is the refunding and improvement mortgage of the Denver & Rio Grande Western Railroad Company, dated February 1, 1924.

This mortgage is reproduced in full in the court record, at page 226. I presume that it will be exhibit 37.

Mr. Nicodemus: Exhibit 37; we offer it in evidence.

Examiner Kirby: Subject to the understanding expressed by Examiner Boyden, relative to the possible necessity of the Debtor supplying copies for the Commission's record,

the refunding and improvement mortgage just described will be designated as exhibit 37 and received.

[fol. 900] (Exhibit 37, Witness Wyer, received in evidence, by reference.)

By Mr. Nicodemus:

Q. In connection with that mortgage you have certain supplements, three, I believe, and a summary of the supplemental indentures?

A. Yes. The three supplemental indentures to this mortgage are dated and described as follows:

December 20, 1924, covering assignment and agreement relating to the capital stock of the Utah Fuel Company.

This is the agreement which has been introduced as exhibit 35. That will be 37-A.

The second supplemental indenture, dated February 13, 1929, covered five tracts of land in Salt Lake City; 37-B.

Mr. Hoffman: Exhibit 37-A and exhibit 35, are the same?

The Witness: One is the agreement itself and the other is the supplemental indenture relating to it.

The third supplemental indenture, dated January 29, 1930, covers the Kenilworth branch a piece of new construction in Carbon County, Utah; 37-C.

The summary sheet which has been distributed will be 37-D.

Mr. Nicodemus: We offer them severally in evidence.

Examiner Kirby: Is there objection?

(No response.)

[fol. 901] If not, the described supplemental indentures are received as exhibits 37-A, 37-B and 37-C, and the summary sheet as 37-D.

(Exhibits 37-A, 37-B, 37-C and 37-D, Witness Wyer, were received in evidence.)

Mr. Nicodemus: Now, Mr. Wyer, will you make a statement respecting the refunding and improvement mortgage?

A. There are $14,000,000 of these bonds outstanding in the hands of the public.

They are shown on lines 6 and 7 of the statement of Present Capitalization, on page 5 of the Plan.

There are $2,000,000 6 per cent bonds, series A. Those are the bonds that are owned, half by the Western Pacific Railroad Corporation, and half by the Missouri Pacific Railroad Company.

There are $12,000,000 of the Series B 5 per cent bonds in the hands of the public.

In addition to those bonds, there are $10,481,000 of these bonds pledged, of which $4,385,000 are pledged with the RFC and $6,096,000 with the Chase National Bank, as security for short term loans.

The security behind these bonds covers 119 miles of scattered branch lines, of which 85 miles are standard gauge, and 34 miles of narrow gauge, and it is also a lien on all of the other mileage of the company, subject to the prior [fol. 902] liens that I have already described.

In addition, there are pledged under it, $906,000 principal amount of refunding bonds of the Rio Grande Junction Railway Company and all but directors' qualifying shares of the capital stock of that company.

The refunding bonds of the Rio Grande Junction are a second mortgage on that property, there being a prior first mortgage of $2,000,000, so that the refunding and improvement mortgage in effect has a lien on the property of the Rio Grande Junction Railway Company, subject to $2,000,000 of first mortgage bonds outstanding in the hands of the public, which will be described a little later.

. . . . . .

[fol. 903] Now, I would like to say also, in connection with Mr. Gammell's question, that I had not completed my discussion of the security of this mortgage at the point at which he interrupted.

And I now would like to complete it by saying that this mortgage is a lien on all of the equipment of the company, subject to the prior liens that I have described, which, in the basis which we have used in this Plan, do not apply on all of the equipment of the company.

In other words, there is in the basis that we have adopted here, a substantial amount of equipment of the company on which the refunding and improvement mortgage is a first lien.

In other words, it is a lien on all equipment, and there are certain prior liens ahead of it, but those prior liens do not attach to all of the equipment, and in fact, there is

a substantial amount to which they do not attach, and it is [fol. 904] also, we believe, a lien on all of the equipment now subject to equipment trusts, subject to the lien of those trusts, without any other prior liens ahead of it on that equipment.

There are also some securities of joint terminal companies, at Denver, Pueblo and Salt Lake City, pledged under this mortgage, and it also has a muniment of title in $8,335,000 of D. & R. G. Railroad Company improvement mortgage bonds which matured on June 1, 1928, and which were paid off at maturity with the proceeds of the refunding and improvement bonds.

I have here for the record two copies of this improvement mortgage of the Denver & Rio Grande Railroad Company, given to the United States Trust Company of New York, Trustee, and dated June 1, 1888.

Mr. Nicodemus: We offer that document in evidence and ask that it be assigned exhibit No. 38.

Examiner Kirby: Is there any objection?

(No response.)

The copy of the improvement mortgage of the Denver & Rio Grande Railroad Company, dated June 1, 1888, is received as exhibit 38.

(Exhibit 38, Witness Wyer, received in evidence.)

By Mr. Nicodemus:

Q. Are there any supplements to that?

A. Yes, there were two supplements to that mortgage, which I have here. These were dated December 20, 1924. [fol. 905] Mr. Nicodemus: Be 38-A.

The Witness: Covering the assumption of mortgage bonds in the hands of the public; 38-A.

And April 1, 1925, covering the assumption of obligations under the mortgage, 38-B.

Q. And the summary?

A. The summary sheet would be 38-C.

Mr. Nicodemus: We offer those, severally, in evidence.

Examiner Kirby: Is there objection to their receipt?

(No response.)

The supplements described are received as exhibits Nos. 38-A and 38-B, and the summary sheet is exhibit 38-C.

(Exhibits 38-A, 38-B and 38-C, Witness Wyer, were received in evidence.)

Mr. Nicodemus: You have nothing more to say about that mortgage, Mr. Wyer?

A. No.

Q. Now, Mr. Wyer, did the Debtor issue from time to time notes to Reconstruction Finance Corporation?

A. Yes, it did.

Q. They are not shown on this table of present capitalization?

A. No, they are mentioned over on top of page 6 of the Plan.

Q. They aggregate how many millions of dollars?

[fol. 906] A. $10,691,850.

Q. Perhaps you will state in a general way the origin of those loans and perhaps will wish to separate them as between the original loans, the Dotsero Cutoff loans and the loans covering the Denver & Salt Lake stock.

A. The original series of loans aggregated $3,950,000. Those were for general corporate purposes.

Examiner Boyden: What do you mean, Mr. Wyer, by general corporate purposes?

A. I was just going to expand on that a little. They covered, principally, payments of interest on bonds of the company, the earnings at that time, 1932, being insufficient to provide funds for that interest, and they also covered certain additions and betterments that were currently necessary to the property.

The purposes, of course, were stated in the loan applications, and moneys were applied in accordance with that purpose.

The purpose of these loans was stated in the various applications at the time as being what I have described and the funds were used for those purposes.

By Mr. Nicodemus:

Q. Now, those loans aggregated how much?

A. $3,950,000.

Q. And are they represented by five notes, as I under-

[fol. 907] stand the record?

A. Yes.

Q. Give the dates of those notes.

A. I have these notes listed here as an exhibit, and in connection with giving the dates, I think the exhibit should best be numbered.

Mr. Nicodemus: Those exhibits have already been distributed to counsel?

A. Yes.

Q. The first note is dated March 29, 1932?

A. Yes.

Q. And is in the amount of?

A. $250,000.

Mr. Nicodemus: We offer that as exhibit 39.

Examiner Kirby: In the absence of objection, this note to the Reconstruction Finance Corporation, dated March 29, 1932, is received as exhibit No. 39.

(Exhibit 39, Witness Wyer, received in evidence.)

The Witness: The next note is dated June 27, 1932, in the amount of $750,000, and would be exhibit 39-A.

Examiner Kirby: In the absence of objection, it is so received, as exhibit 39-A.

(Exhibit 39-A, Witness Wyer, received in evidence.)

The Witness: The next note is dated June 29, 1932, for $1,000,000; will be numbered 39-B.

[fol. 908] Examiner Kirby: This note, dated June 29, 1932, is received as exhibit 39-B.

(Exhibit No. 39-B, Witness Wyer, received in evidence.)

The Witness: The next note is dated April 25, 1933, for $1,000,000; will be numbered 39-D.

Examiner Kirby: This note, dated April 25, 1933, is received as Exhibit No. 39-C.

(Exhibit No. 39-C, Witness Wyer, received in evidence.)

The Witness: And the last note was dated June 30, 1933, in the amount of $950,000, and would be numbered 39-D.

Examiner Kirby: The note to the Reconstruction Finance Corporation, dated June 30, 1933, is received as exhibit 39-D.

(Exhibit 39-D, Witness Wyer, received in evidence.)

By Mr. Nicodemus:

Q. Have you any explanation to make of those.

A. No.

Examiner Boyden: Before we pass from that, Mr. Wyer, have you prepared a statement showing the exact purposes for which those loans were used?

A. I have not, but that can be very easily done and I would be very glad to do it.

Examiner Boyden: Please.

By Mr. Nicodemus:

Q. Now, the next loan from the Reconstruction Finance [fol. 909] Corporation was the Cut-off loan?

A. Yes, sir.

Q. Have you the notes covering that loan.

A. No, I have not. There were 21 notes in this series; they aggregated $3,631,000.

[fol. 910] The proceeds were used exclusively for the construction of the Dotsero Cut-off. The last note of the series, dated August 31, 1934, is reproduced at page 50 of the court proceedings, and all of the notes are similar, this is a typical note in that series.

Mr. Nicodemus: Well, we offer the typical note as exhibit 39-E, and will refrain from furnishing the other 20 unless someone feels that they ought to be placed in the record.

Examiner Kirby: The date of that note to which reference is made is August 31, 1934.

Mr. Nicodemus: Correct.

Examiner Kirby: And is found at page 50 of the court record?

Mr. Nicodemus: Correct.

Examiner Kirby: With the understanding expressed by Mr. Boyden previously, this note will be indicated as exhibit No. 34-E, and so received by reference to the court record.

(Exhibit 39-E, Witness Wyer, received in evidence, by reference.)

The Witness: This construction was opened for operation on June 15, 1934. I do not think there is anything more need be said in connection with this.

I will describe the collateral security for all of these loans [fol. 911] later on, as in the end the security for all of these

loans from RFC is pledged and secures all of the notes, and when we come to the end, I will describe the security for all of them.

By Mr. Nicodemus:

Q. Let's take up the loan that was made in connection with the acquisition of the minority stock of the Denver & Salt Lake Railway Company.

A. This aggregated, originally, $3,182,150, which was sufficient to pay for all of the minority stock at the rate of $155 a share, the Commission having approved the purchase of the stock at that price.

Some of the stock was not turned in, 460 shares to be exact, and consequently $71,300 of the loan was repaid after the expiration date of the offer, so that the net loan today is $3,110,850.

The note covering this loan was dated December 19, 1934, and appears on page 55 of the court record.

Mr. Nicodemus: We offer it as exhibit 39-F.

Examiner Boyden: You will be able to furnish copies of that?

Mr. Nicodemus: We will.

Examiner Kirby: It is received as exhibit No. 39-F.

(Exhibit 39-F, Witness Wyer, received in evidence, by reference.)

By Mr. Nicodemus:

Q. Mr. Wyer, was there a supplemental agreement with [fol. 912] the Reconstruction Finance Corporation relative to the pledging of the Denver & Salt Lake stock for the loan covering acquisition of the Denver & Salt Lake stock?

A. Yes, there was.

Q. Will you briefly describe it for the record?

A. Well, this was dated December 19, 1934, and it is reproduced on page 63 of the court record. I do not have a copy of it here.

Mr. Nicodemus: We introduce it as exhibit 39-G.

Examiner Kirby: It is received, similar to the receipt of exhibit 39-E and 39-F.

(Exhibit 39-G, Witness Wyer, received in evidence, by reference.)

By Mr. Nicodemus:

Q. Now, Mr. Wyer, did the Reconstruction Finance Corporation also take a lien on the equities in the collateral that the Debtor pledged with the Railroad Credit Corporation?

A. Yes, they did.

Q. Have you a copy of the assignment of that equity?

A. I have.

Q. Will you produce it?

A. This has been distributed. It is dated April 21, 1933, and it is an assignment to the RFC of any equity in $662,000 of the D. & R. G. First Consolidated 4 per cent bonds, [fol. 913] pledged with the Railroad Credit Corporation at that time. I have already described that mortgage.

Mr. Nicodemus: We offer that as 39-H.

Examiner Kirby: In the absence of objection, it is so received.

(Exhibit 39-H, Witness Wyer, received in evidence.)

By Mr. Nicodemus:

Q. Now, Mr. Wyer, did Reconstruction Finance Corporation overlook the equity in the bonds pledged to the Chase National Bank?

A. No, sir, they did not, they do not seem to have.

Q. Have they taken an assignment on that?

A. Yes. That was also dated April 21, 1933; copies of it have been distributed, and it will be No. 39-I. This relates to $6,096,000 of Series B refunding and improvement 5 per cent bonds pledged with the Chase National Bank; RFC is getting second lien on those bonds.

Mr. Nicodemus: We offer that in evidence.

Examiner Kirby: In the absence of objection, it is so received.

Mr. Nicodemus: 39-I?

Examiner Kirby: 39-I.

(Exhibit 39-I, Witness Wyer, received in evidence.)

By Mr. Nicodemus:

Q. Mr. Wyer, have you prepared a statement showing the investment in the cut-off as of December 31, 1935?

[fol. 914] A. Yes, I have.

Q. Have you any comment to make on it before I submit it to the Examiners, and, of course, that could be separated out of these other documents.

A. It is all, I think, in the record, separately in different places. No, I do not think it is, either, I think part of it is in the record in separate places, but inasmuch as the greater part of these loans from the RFC was to enable the Debtor to construct the cut-off and complete the acquisition of the stock of the Denver & Salt Lake this seemed to be an appropriate time to put in a statement showing what the total investment of the Debtor Company is in that project, and this exhibit shows that that total investment is $12,526,376, of which amount $7,838,356 represents an investment in the capital stock of the Denver & Salt Lake Railway Company; $1,042,560 and investment in income bonds of the same company and $3,631,000, the actual cost of construction of the cut-off itself.

Plus a small amount for advances to the cut-off company.

Mr. Nicodemus: We offer the statement.

Examiner Kirby: This statement of the investment in the cut-off route is received as exhibit 39-J.

(Exhibit 39-J, Witness Wyer, received in evidence.)

. . . . . .

[fol. 915] By Mr. Nicodemus:

Q. Mr. Wyer, part of the collateral under these Reconstruction Finance Corporation loans is stock of Motorways Bus Lines, owned by the Debtor.

A. Yes. Before we discuss that, I think perhaps this is the best time to summarize the entire collateral under all of the loans.

Q. That is all right. You may do so.

A. The collateral divides itself into four groups: The first constitutes bonds which are obligations of the Debtor Company.

These are $783,000 of the D. & R. G. first consolidated 4's, that is, the first lien on the Colorado line; $10,000 of the R. G. W. first trust 4's; $1,395,000 of the R. G. W. first consolidated 4's, which is a second lien on the main line in Utah; and $4,385,000 of the refunding and improvement 5's.

Then there are the securities which are connected with the Cut-off route. They have $1,266,000 of the Denver &

Salt Lake income 6's, the second mortgage on the D. & S. L.; 49,540 shares, or 99.8 per cent of the capital stock of the D. S. L., and all of the capital stock of the D. & S. L. W., [fol. 916] which is the company owning the Cut-off, there being no bonded debt of the D. & S. L. W.

So that they, in effect, have as security all of the D. & S. L. and D. & S. L. W., except for loans of $2,000,000 first mortgage bonds of the D. & S. L. and $9,734,000 of income 6's, which rank ahead or in par with the loan of the RFC.

Then they have the stock of two motor subsidiaries of the Debtor, Denver, Colorado Springs, Pueblo Motorways, Inc., $42,000 par value, which is half of the total stock of that company, and which is all of the stock which is owned by the Debtor.

They also have $130,000,000 par value of the Rio Grande Motorway, Inc., which is 50 per cent of the total issue, and all of the stock owned by the Debtor.

In the miscellaneous group, they have the entire stock of the Goshen Valley and $1,777,000 of Rio Grande Southern Railroad Company first mortgage 4 per cent bonds. The Rio Grande Southern is a narrow gauge line which is located in the southwestern part of Colorado. It connects with the narrow gauge lines of the Debtor at two points, one of them Ar[illegible]go and the other, Ridgeway, which is just south of Montrose.

The company is in receivership, has been for a number of years, and these bonds have been in default for fourteen [fol. 917] years. I would not consider that they had any particular value.

Then they have a second lien on the securities pledged with the Railroad Credit Corporation and the Chase Bank, as I have already described.

Now, the motor subsidiaries are the only companies covered by that collateral that need any further description.

By Mr. Nicpdemus:

Q. Have you a descriptive statement with respect to the Rio Grande Motorway, Inc.?

A. No, I haven't a descriptive statement of the company, but I have an income account.

Q. An income account for 1927 to 1935?

A. For nine years, yes.

Q. Have you a balance sheet?

A. Yes.

Mr. Nicodemus: We offer those as a single exhibit, 39-K.

The Witness: You are offering both the income account and the balance sheet?

Examiner Kirby: Are they on separate sheets?

The Witness: Yes.

Mr. Nicodemus: One financial statement.

The Witness: The Rio Grande Motorway operates a very substantial mileage in the western part of Colorado and in the state of Utah. Exhibit 39-K shows the net income in [fol. 918] every year of operation. In 1935 the amount earned represented approximately 5 per cent on the debtor company's investment in this subsidiary, that investment being $228,000.

This refers to 39-K, sheet 1.

Examiner Boyden: The income account is sheet 1 and the balance sheet is sheet 2?

The Witness: That is right.

The second sheet of exhibit 39-K, the balance sheet of this company, shows that the company's depreciation reserve is invested to the extent of $106,000 in United States Government bonds.

The second motor subsidiary, the Denver, Colorado Springs & Pueblo Motorway, is also represented by an income account and a balance sheet, which will be exhibit 39-L, of two pages.

Examiner Kirby: Well, just a minute. 39-K has not been received.

Mr. Nicodemus: We offer it.

Examiner Kirby: In the absence of objection, the income account statement of the Rio Grande Motorway, Inc., is received as 39-K, sheet 1, and the balance statement is received as 39-K, sheet 2.

(Exhibit 39-K, sheets 1 and 2, Witness Wyer, received in evidence.)

[fol. 919] Mr. Nicodemus: We make a similar offer of corresponding statements of the Denver, Colorado Springs, Pueblo Motorway, Inc.

Examiner Boyden: Sheet 1, again, is the income account and sheet 2 is the balance sheet?

The Witness: Yes, sir.

Examiner Kirby: The income account statement of the Denver, Colorado Springs, Pueblo Motorway, Inc., is received as exhibit 39-L, sheet 1, and the balance sheet statement of the Denver, Colorado Springs, Pueblo Motorway, Inc., is received as exhibit No. 39-L, sheet 2.

(Exhibit 39-L, sheets 1 and 2, Witness Wyer, were received in evidence.)

The Witness: This company operates on the eastern slope of the Rocky Mountains in Colorado. The Debtor has an investment of $139,000 in it, or rather, the total investment of the company is $139,000, the Debtor owning 50 per cent of the capital stock. The earnings in 1935 were $30,000, or about 22 per cent on the investment, and this company has $70,000 in U. S. Government bonds.

I think that completes the description of the RFC loans and the security for them.

. . . . . .

[fol. 920] By Mr. Nicodemus:

Q. Have you any comment to make on this note, Mr. Wyer?

A. The loan from the Railroad Credit Corporation was used entirely for the payment of interest on funded debt of the Debtor.

I was asked this morning to give the detail of the purposes of the Reconstruction Finance Corporation loans, and this loan is tied up with the Reconstruction Finance Corporation loan, so I can now give a complete statement of the purposes of both loans for the record.

I have that information.

Q. Will you do it now, if this is a convenient time?

A. This is a good time to do it.

The first loan from the Reconstruction Finance Corporation was originally $750,000, and it was used for the following purposes:

To pay the interest on the R. G. W. Consols due April 1, 1932, $301,600.

To pay the interest on the Refunding & Improvement Bonds, due April 1, 1932, $360,000.

To pay for crossties, $88,400.

[fol. 921] Total, $750,000.

Said loan was reduced from $750,000 to $250,000 by application of the proceeds of the loan from the Railroad Credit Corporation, which was, of course, applied against the money advanced to pay interest on funded debt.

Examiner Boyden: That loan is covered by the note of March 29, 1932, is that right?

The Witness: Yes, sir, that is right.

The second loan, covered by the note of June 27, 1932, for $750,000, was used for the following purposes:

To pay the interest due July 1, 1932 on the D. & R. G. First Consolidated Bonds, $826,095.

To pay the interest due the same date on the Rio Grande Western First Trust Bonds, $303,800.

There was operating cash on hand to apply towards these obligations of $379,895, leaving $750,000 required from the Reconstruction Finance Corporation.

The third loan, dated July 29, 1932, for $1,000,000, was used for the following purposes:

To pay the interest due August 1, 1932, on the General Mortgage 5's, $745,200.

To pay in part taxes in Colorado due on August 1st, $254,800.

Total, $1,000,000.

The fourth loan, dated April 25, 1933, for $1,000,000 was [fol. 922] to apply in part against Colorado taxes for the year 1932.

The fifth loan, June 30, 1933, for $950,000, was used as follows:

To pay the interest due July 1, 1933 on the D. & R. G. First Consolidated Bonds, $826,095.

To pay the interest due the same date on the R. G. W. First Trust Bonds, $303,800.

There was cash on hand on operations available for these purposes of $179,895, leaving $950,000 required from the Reconstruction Finance Corporation.

* * * * * * *

[fol. 923] Q. Have you a copy of the General Mortgage?

A. I have.

Q. Will you describe it briefly and then hand it to the Examiner?

A. This is described as General Mortgage of the Denver & Rio Grande Western Railroad Company to the Farmers

[fol. 924] Loan & Trust Company, Trustee, dated February 1, 1924.

Q. Sufficient copies are not in hand for general distribution?

A. We do not have them here, no. I think there are plenty of copies of this particular mortgage if anybody wants them, but we did not distribute this one.

Mr. Nicodemus: We offer this mortgage in evidence as Debtor's exhibit 42.

Examiner Kirby: Is there objection to its receipt?

(No response.)

If not, it is received as exhibit No. 42.

(Exhibit 42, Witness Wyer, received in evidence.)

By Mr. Nicodemus:

Q. Mr. Wyer, have you any statement to make with respect to the general mortgage?

A. There are outstanding under this mortgage, $29,808,000 of bonds, which are shown in line 8 of the Table of Present Capitalization on page 5 of the Plan.

They are 5 per cent bonds, which mature August 1, 1955. There are no bonds pledged in addition to those already mentioned as outstanding.

They are a lien generally upon the property of the company subject to the prior liens I have already described, including the Refunding & Improvement Bonds.

In March of 1934, the Debtor Company, having found that it was unable to pay the interest on these bonds which was [fol. 925] due February 1st of that year, proposed a plan to the bondholders whereby they would accept in cash half of the interest which had been due on February 1, 1934, and present for stamping that coupon and the two following coupons, with the understanding that those three coupons, the one paid half in cash and the other two presented for stamping, would not be presented for payment until December 31, 1935.

Q. Have you a statement showing the number of dollars, in assents to that deferment plan?

A. Yes, I have.

Q. Has that been distributed, together with the plan itself?

A. That has been distributed, together with copies of the plan.

Mr. Nicodemus: We offer that as Debtor's exhibit 43.

The Witness: That has two sheets there fastened together.

Mr. Hoffman: Have you passed 42?

Mr. Nicodemus: We have.

Mr. Hoffman: There is one question I would like to ask the witness on exhibit 42.

You stated that these D. & R. G. W. bonds were junior to the securities you had already described. Did you intend by that to indicate that they were junior to the Re- [fol. 926] construction Finance Corporation notes, to the Railroad Credit Corporation notes, and the bank debt, which you had previously described?

The Witness: If I did not say so, I should have said that they were junior to the mortgage liens which I had previously described. I think that statement is correct.

Out of the total of $29,808,000 of these bonds, coupons from $23,555,600 accepted the plan and presented the coupons. That is approximately 78 per cent.

Examiner Kirby: Is there objection to the receipt of exhibit No. 43?

(No response.)

It is received in evidence.

(Exhibit 43, Witness Wyer, received in evidence.)

The Witness: At the time of the reorganization in 1924, when this mortgage was first put on the property, it was provided that the interest for five years from the date of the mortgage would be payable at the discretion of the board.

There were certain safeguards provided in the mortgage governing the payment of that interest, but it was not a fixed charge for the first five years after February 1, 1924.

None of that interest for that five year period was paid. [fol. 927] I will discuss when I come to another point in the testimony the treatment accorded that unpaid interest, but the unpaid interest on these bonds is exceptionally large because of that feature of the mortgage, and that ought to be mentioned and borne in mind when thinking of this mortgage.

Examiner Boyden: Do you mean by that the statement of unpaid interest does include the interest for the five years?

The Witness: It does include it, yes. I think that is all that needs to be said about that mortgage at this time.

. . . . . .

[fol. 928] Q. Have you a statement of the unsecured claims against the Debtor, that is, the claims that existed at the time of Trusteeship?

A. Yes, I have.

Q. Has that been distributed?

A. Yes.

Q. From what source did you secure the information stated in that statement?

A. This statement was prepared from information furnished me by the Trustees.

Q. You believe it to be reliable?

A. Yes, sir.

Mr. Nicodemus: We offer it in evidence.

Mr. Marsh: This is the entire amount of the general creditors' claims provided for in the Plan?

The Witness: This would be the maximum amount.

Mr. Marsh: Some of these would be paid, probably, before the Plan would come down?

The Witness: Yes. I want to say as to that we are advised that a great many of these things are being paid currently in cash as the liquidated amount is determined.

Mr. Marsh: Will some of these come within the six [fol. 929] months' rule?

The Witness: Yes, a good many of them would come within the six months' rule, but the amount is not determined, the amount is in dispute as yet. To the extent that they should not be paid in cash, they would, of course, be dealt with as proposed in the Plan, but this is the maximum amount, as we are advised at this time.

Mr. Gibson: There were no unpaid claims for material and supplies furnished to the Trusteeship?

The Witness: I think such as there were of those have been paid. These are the ones that have not yet been disposed of. This does not include claims which have been disposed of.

Examiner Kirby: Is there any objection to the receipt of exhibit 45?

(No response.)

A "Summary of Claims of General Creditors" is received as exhibit 45.

(Exhibit 45, Witness Wyer, received in evidence.)

By Mr. Nicodemus:

Q. Mr. Wyer, were any of the assets of the Debtor unpledged as of November 1, 1935?

A. Yes, there were.

Q. Have you a statement of those assets?

A. I have.

Q. Will you present it, with any explanation which you [fol. 930] care to make?

A. I have prepared a statement which I have designated as "Unpledged investments at time of filing petition for trusteeship".

While this statement includes all five of the companies concerned in the Plan, there really is not any good reason for including the assets of the Denver & Salt Lake, the Rio Grande Junction, or the Goshen Valley, as they are not in the trusteeship.

Confining this discussion to the assets of the Denver & Rio Grande Western and the Denver & Salt Lake Western, I would say simply that the unpledged assets of those companies consist almost entirely of stocks or other securities on which it is very difficult to place any valuation.

Q. Terminal property, joint property?

A. There are several lots of securities representing stocks in terminal companies which are used jointly by the Rio Grande with other companies.

About the only asset which has any real value is the fourth item on page 2, designated as Receivers' Certificates of the Rio Grande Southern Railroad Company, and I have already described the location of that property.

The interest on these certificates has been paid currently [fol. 931] and I would assume that they would have a real value somewhat approaching their face amount.

The other items of security are as I have said, either stocks representing water rights owned by the company

or terminal stocks or qualifying directors' shares, or other items which probably have no realizable value and no value to anyone except the Denver & Rio Grande Western Railroad Company.

This, of course, is submitted because that has a bearing upon the payment of unsecured claims.

. . . . . .

[fol. 932] By Mr. Nicodemus:

Q. Mr. Wyer, has the Denver & Salt Lake Western Railroad Company any indebtedness outstanding?

A. Yes, it has.

Q. By what is that represented?

A. That is represented by a note dated December 19, 1934, originally in the amount of $3,182,150, reduced by indorsement to $3,110,850.

It is reproduced on page 59 of the court record.

This note is to the Reconstruction Finance Corporation and covers the same indebtedness which the Debtor Company also owes to the Reconstruction Finance Corporation, which has been described in connection with the Reconstruction Finance Corporation debt already discussed. Both the parent company and the subsidiary were required to give these notes in connection with the loan for the purchase of the remaining stock of the Denver & Salt Lake.

Q. One of the notes is collateral to the other; is not that the exact situation?

A. Yes, I believe so.

Mr. Nicodemus: We offer that note as Debtor's exhibit 53.

Examiner Kirby: It is so received.

[fol. 933] (Exhibit 53, Witness Wyer, received in evidence.)

. . . . . .

[fol. 934] Q. Have you a copy of the first mortgage of the Rio Grande Junction Railway Company?

[fol. 935] A. Yes.

Q. Will you produce it?

A. I have it here. It is described as First Mortgage, the Rio Grande Junction Railway Company to the Central Trust Company of New York, Trustee, dated December 1, 1889.

Mr. Nicodemus: We offer that as exhibit 59.

Examiner Kirby: Is there any objection to its receipt?

(No response.)

It is received as exhibit No. 59.

(Exhibit 59, Witness Wyer, received in evidence.)

By Mr. Nicodemus:

Q. Mr. Wyer, is there a supplement to the first Mortgage of the Rio Grande Junction Railway Company?

A. There is.

Q. And it bears date of what?

A. Of December 29, 1924. This supplement covers the assumption by the Denver & Rio Grande Western Railroad Company of the mortgage bonds in the hands of the public.

Q. Have you a descriptive statement requesting that settlement?

A. Yes. That has been distributed.

Mr. Nicodemus: We offer those documents severally as exhibits 59-A and 59-B.

Examiner Kirby: The statement in the supplemental in- [fol. 936] denture are received as exhibits 59-A and 59-B.

(Exhibits 59-A and 59-B, Witness Wyer, were received in evidence.)

The Witness: There are $2,000,000 of bonds outstanding under this mortgage, which are the bonds mentioned at the bottom of page 5 of the Plan.

They mature December 1, 1939, bear interest at the rate of 5 per cent, and are, as I have stated, a first lien on the line between Rifle and Grand Junction, part of the main line operated by the Debtor Company.

By Mr. Nicodemus:

Q. Is there a further mortgage on the line of the Rio Grande Junction Railway Company?

A. Yes, there is.

Q. Will you produce it and describe it?

A. I have two copies of the refunding mortgage, the Rio Grande Junction Railway Company to the Equitable Trust Company of New York, Trustee, dated January 1, 1929.

Mr. Nicodemus: We offer that as Debtor's exhibit 60.

Examiner Kirby: Is there objection?

(No response.)

It is received as exhibit 60.

(Exhibit 60, Witness Wyer, received in evidence.)

By Mr. Nicodemus:

Q. Will you state the bonds outstanding or issued under that mortgage?

A. There have been $906,000 of bonds issued under this [fol. 937] mortgage. They are all owned by the Denver & Rio Grande Western Railroad Company and pledged under its Refunding & Improvement Mortgage.

The bonds issued mature Janu ry 31, 1979, and carry 5 per cent interest. This mortgage is a second lien on the property of the Rio Grande Junction Railway Company.

Q. Have you a specimen of the stock certificate of the Rio Grande Junction Railway Company?

A. Yes, I have.

Q. Will you produce it?

—We offer the document as Debtor's exhibit 61.

Examiner Kirby: Is there objection?

(No response.)

Exhibit 61 is received in evidence.

(Exhibit 61, Witness Wyer, received in evidence.)

The Witness: All of this stock except directors' qualifying shares is also pledged under the Refunding & Improvement Mortgage of the Denver & Rio Grande Western Railroad Company.

. . . . . .

[fol. 938] Therefore, we felt that in setting up the fixed charges we ought to set a figure which would be safely covered by an income available for interest of $3,000,000.00. We set that figure at $2,358,445.00, which would have been covered about between 1¼ and 1.3 times during the average of these three low years, and would have been covered in each of those years.

Then we thought that the property ought to have an issue of bonds whose interest was payable if earned. We wanted

[fol. 939] to make this issue a pretty good issue, so we tried to set the amount of that income issue at a figure which would have had its charges just about covered during the first year after the opening of the cut-off, or during 1935. We estimated that the new company could earn or would have earned in 1935 about three and one-half million dollars net available for interest, and therefore we tried to set the income bonds on a basis which would have had its interest charges about covered during that period.

Exhibit B of the plan shows that the income bonds which we propose to be issued here, would have had their interest charges covered if there had been $3,241,000.00 available for interest. That is somewhat less than the $3,500,000.00 figure which I have already mentioned, but there is an Additions and Betterments fund in the plan which will be explained later, which will take up that difference. But that general consideration governs the amount of Income Bonds which we proposed under the plan.

. . . . . .

[fol. 940] (Exhibit 69, Witness Wyer, received in evidence.)

. . . . . .

[fol. 941] By Mr. Nicodemus:

Q. Well, judging the future by the past, have you an exhibit showing what you have spent in previous years for similar improvements?

A. Yes, I have.

Q. Will you produce it and describe it for the record?

A. This is described at "Charges to Investment in Road and Equipment Account" and includes such charges for four of the five companies embraced in the plan and with a note to the effect that charges on the D. & R. G. W. include the Goshen Valley.

The total of these gross expenditures by individual years reached its lowest figure in 1932 in which about $389,000.00 was spent. In 1935 $894,000.00 was spent. There are probably only two years there in which the expenditure fell below three per cent of the gross and of course a number of years in which it was very much above 3 per cent of the gross. The average for the ten year period was $3,273,000,

which would be very much more than 3 per cent of the gross revenue.

Q. That does not include expenditures of the principal debtor on leased properties?

A. Yes, it does.

Q. It does?

A. Yes.

Q. Have you a separate exhibit?

[fol. 942] A. No, this includes expenditures on—I beg your pardon—this exhibit does include some expenditures on leased lines.

For example, all of the expenditures on the Rio Grande Junction represent leased line expenditures, and the expenditures on the Denver and Salt Lake Western represent principally expenditures covering the original construction during 1935, and would, of course, represent expenditures on leased lines. They do not include on this exhibit, however, expenditures for improving the property of the Moffat Tunnel Improvement District, which is part of the leased line expenditures. With that exception it includes all expenditures on leased lines, and I have a separate exhibit covering the expenditures for improvements on property of Moffat Tunnel Improvement District.

Mr. Nicodemus: We offer this statement described by the Witness as Exhibit No. 73.

Examiner Kirby: Is there any objection?

Mr. Hoffman: I would like to ask a question first, if I may.

By Mr. Hoffman:

Q. Mr. Wyer, in connection with this proposed Exhibit No. 73, I am correct, am I not, in the understanding that these represent only the improvements that were charged to capital account?

[fol. 943] A. That is correct.

Q. And that in addition to that the regular and ordinary improvements or extraordinary improvements that perhaps there were, were charged to the regular maintenance of way and structures and maintenance of equipment?

A. That is correct.

Q. Now, do you regard that 3 per cent of the revenue is a fair amount to be set out for the purpose as indicated in the plan?

A. Yes, I do.

Q. And these represent figures taken from the books, I assume?

A. These do.

Q. I did not mean that you necessarily computed them yourself, but I mean they represent figures taken from the books of the debtor?

A. They do. I think in answering your question as to whether I consider 3 per cent a fair amount; I ought to say that I consider it a fair amount to be set apart out of income for this purpose. I do not mean by that that 3 per cent will take care of all expenditures for Additions and Betterments in the future. It would not have come anywhere near to taking care of them in the past and I know that it will not in the future, but I think it is a fair amount to set aside out of income, having in mind that [fol. 944] in certain years you may not be able to finance, and that you will need a certain minimum amount from income in order to keep operating.

Q. Now, is it not true that during the period covered by this proposed Exhibit No. 73, the charges to Investment in Road and Equipment and the charges to Operating Expenses by reason of similar items were abnormally high?

A. I would say yes, that during some years of this period that would be true. It would not be true in other years.

Q. The road has engaged in what we might call a rehabilitation program during a portion of this period, is that not right?

A. Yes, during four, possibly five years of this period I think that would be true.

Q. There *was* correspondingly large charges in that period to Income and Capital?

A. Yes.

Mr. Hoffman: All right. With that explanation I have no objection to the exhibit going in.

Examiner Kirby: Exhibit No. 73 is received in evidence.

(Exhibit No. 73, Witness Wyer, was received in evidence.)

[fol. 945] J. S. PYEATT was sworn and testified as follows:

Direct examination.

By Mr. Nicodemus:

Q. Will you state your name?

A. J. S. Pyeatt.

Q. Mr. Pyeatt, you are President of the debtor, the Denver and Rio Grande Western Railroad Company, are you not?

A. The corporation.

Q. And have occupied that position for how many years?

A. Since December 20th, 1924.

Q. You came to the company at the time of the conclusion of the last reorganization?

A. I did.

Q. Will you state, in a brief way, the condition of the property as you found it, in the concluding months of 1924?

[fol. 946] A. Very briefly I would say that the condition generally was not very high at that time as to rail, ballast and bridges, the freight car equipment and the general lack of facilities for handling the amount of business that the road had at that time, I refer particularly to the terminals, most of them terminals were inadequate and rather badly constituted for handling the work; the rail was, a good deal of it, light and much of it old. Due to the character of the size used and the lack of ballast, it was expensive to maintain for the service that the road had to give at that time.

Q. Was it the policy of the reorganized company to correct those conditions and improve the property from year to year?

A. It was. Considerable had been done the previous year by the Receiver in the way of strengthening certain of the narrow gauge lines by the purchase and laying of some relay rail, the purchase of some additional equipment, the rehabilitation of the shops and extension of the shop facilities. That work was in progress and completed the first year, most of it, after reorganization.

Q. That policy continued, did it not, up to at least the beginning of the depression?

A. Yes; the new company had what it termed a five year [fol. 947] improvement plan, and beginning in 1925 that work was carried on as rapidly as it could be economically

done and as the funds were available, and during the period from January, 1925, to the end, or to the beginning of the last trusteeship, about $40,000,000.00 were spent for improvements, divisions terminals, relaying of rail, ballasting, signalling, new equipment, rehabilitation or standardization of the old equipment. All of that was done the first four years, practically all of it, of the reorganization period.

About thirty billions of the total amount expended were chargeable to Additions and Betterments, and something over nine millions of dollars, a part of the expense of doing the work, chargeable to operating expenses, went to that account.

Q. Well, as of January 1, 1930, the property, in your judgment, was in condition for safe and economical operation?

A. Yes, it was.

Q. Well, will you now proceed forward from that date? [fol. 948] A. We have prepared a budget.

Q. That budget is for the years 1937, 1938 and 1939?

A. Yes.

Q. We want to get if we can from you—I do not know that it is vitally important, but in brief—what was done toward maintaining the property during the severe depression?

A. In common with all the roads in the country rather drastic reductions were made in operating expenses. This applied to equipment and way as well as all other features of operation, and all done in the face of a reduction in traffic beginning 1930 of about 50 per cent. In other words, the use of the property was reduced to that extent. Of course, the maintenance of equipment could not be reduced nearly a corresponding amount without seriously affecting the condition and character and economical use of the equipment.

As to the freight car equipment, there was considerable deterioration because up to 1931 very little of what would be termed heavy repairs to equipment was made. Running repairs were kept up. At the beginning of the trusteeship, as I recall, we had about 6 per cent bad order freight cars on the road, which was somewhat lower than the average of the lines in that territory.

There was some under-maintenance of freight car equip- [fol. 949] ment.

Locomotives that were needed to handle the business were kept in good condition sufficient to do the job. Some others that were not needed were not repaired, and some of those locomotives would require repairs before they are used when they are needed.

Our requirements of maintenance of way were reduced considerably. In fact, about all we endeavored to do was to keep the track well surfaced, and tie renewals that were necessary made; and "necessary" in that case would mean a perfectly safe and economical operating condition.

* * * * * * *

[fol. 950] WITNESS HORACE STRINGFELLOW

By Mr. Nicodemus:

Q. Mr. Stringfellow, I want to ask you whether Exhibit No. 77 in your judgment exhausts the possibilities of economies or whether there are further possible economies.

[fol. 951] A. No, I do not think it does. This exhibit takes in largely the overhead expense which it is very apparent will be saved in the consolidation and merger. There will undoubtedly be other savings worked out through consolidation of trains and terminals, but which at this particular time I did not have the time to go into as thoroughly as will be necessary to determine in dollars and cents the amount. There are certain offsetting items in connection with the train consolidation, and it would take quite a study to get at those savings and see what the results would be.

Q. Then you think that $212,000 a year is reasonably conservative?

A. Very.

* * * * * * *

[fol. 952] Examiner Kirby: The hearing will come to order.

This is an adjourned session of the hearing in proceedings for reorganization of the Denver & Rio Grande Western Railroad Company, Finance Docket No. 11002.

At the conclusion of the initial session of the hearing held on October 20 to 23, 1936, adjournment was taken to

December 14, 1936, but pursuant to notice from the Commission the further hearing was continued, first, to January 25, 1937, and then to this date.

Are there any changes in appearances, or are there any new appearances to be noted?

ADDITIONAL APPEARANCES

Mr. Stewart: I am William A. W. Stewart, appearing for the United States Trust Company of New York as Trustee under the Consolidated Mortgage of the Denver & Rio Grande Railroad Company, Stewart & Shearer of Counsel.

Mr. Myer: Erskine R. Myer, and Rodney J. Bardwell, Jr., representing the Moffat Tunnel Improvement District, intervener. I also represent Raymond L. Sauter, Trustee of the Denver & Salt Lake Western Railroad Company.

Examiner Kirby: Petition of intervention has been filed by the Moffat Tunnel Improvement District?

Mr. Myer: Yes, sir.

Mr. Bailey: At the original hearing in this proceeding. [fol. 953] Mr. Myer: Yes, sir.

Mr. Bailey: At the original hearing in this proceeding Mr. Clyde S. Bailey, myself, and Mr. John E. Benton, appeared on behalf of the Public Service Commission of Utah, and still so appear. In addition, however, we appear for the Uintah Basin Railroad League.

Examiner Kirby: Does that complete your statement, Mr. Bailey?

Mr. Bailey: I will have a further statement to make at the proper time, Mr. Examiner. If this is such time, I will make it now.

Examiner Kirby: Will you defer that for a moment?

Mr. Anderson: Mr. Examiner, at the original hearing on page 1 the appearance is entered as follows:

> "Henry W. Anderson (Hunton, Williams, Anderson, Gay & Moore, of counsel) and George D. Gibson, (Hughes, Schurman & Dwight, of counsel), Electric Bldg., Richmond, Virginia; and Oscar R. Ewing, 100 Broadway, New York City, N. Y., appearing for Insurance Group Committee, by George S. Van Schaick, Chairman."

That is in error. It should be:

Henry W. Anderson and George D. Gibson, (of Hunton, Williams, Anderson, Gay & Moore, of counsel), Electric Building, Richmond, Virginia; and Oscar R. Ewing, (of [fol. 954] Hughes, Scharman & Dwight, of counsel) 100 Broadway, New York City, New York, appearing for Insurance Group Committee, by George S. Van Schaick, Chairman.

Mr. Fooshee: I am Malcolm Fooshee, appearing for Guaranty Trust Company of New York as successor Trustee of the Denver & Rio Grande Western Railway Company First Consolidated Mortgage, dated April 1, 1899.

Mr. Sunderland and Mr. Fitzgibbons appeared at the first hearing for that Trustee and I am appearing at this one.

Mr. Stewart: Mr. Gerald Hughes appeared for the United States Trust Company at the first hearing, and I am Mr. Stewart.

. . . . . .

[fol. 955] WITNESS J. S. PYEATT

Mr. Nicodemus: Since the last adjournment, Mr. Pyeatt, have you made a study designed to forecast the net income available for interest for the system for a normal year?

[fol. 956] A. I have.

Q. If so, will you state the nature and extent of that study?

A. I have made in association with certain other people that I will describe more in detail in my further statement, a detailed study by commodities of freight over a period of eight years, 1928 to 1935, inclusive.

I have made the best estimate I can, based upon my own knowledge of the property, of not only the gross revenues of a normal year but the operating expenses, by certain accounts, and have prepared a statement showing the gross ton miles, excluding locomotives and tenders, but including company freight, and the net ton miles revenue freight, from 1925 to 1936, inclusive, and for a normal year; showing also the gross revenue, the cost of maintenance of way and structures and of maintenance of equipment by years, total maintenance, and separately, traffic, transportation, miscellaneous, general, and transportation for investment, credit, for each year; and the total operating expenses with

the various deductions and additions according to the ICC accounting, for both the Denver & Rio Grande Western and the Denver & Salt Lake.

I beg your pardon. This does not show more than the principal items of operating expenses of each company, and [fol. 957] omits the additions and deductions, taxes, rentals, etc., below that, which will be shown in another statement.

By Mr. Nicodemus:

Q. Have you finished your description of this statement?
A. Yes.

Mr. Nicodemus: We offer the statement in evidence and ask it be designated as exhibit 117.

Examiner Kirby: It is received in evidence.

(Exhibit No. 117, Witness Pyeatt, was received in evidence.)

Mr. Gibson: If your Honor please, I would like to reserve a motion to object to this exhibit when we have had an opportunity to examine more fully the data from which the revenues for a normal year have been computed.

Examiner Kirby: You would like to reserve the right to move to strike later?

Mr. Gibson: Yes.

Examiner Kirby: That is understood.

Examiner Boyden: Before you leave that, I would like to find out what is meant by the normal year, on the exhibit.

The Witness: That is a little bit difficult to describe precisely, but it is the year when occur all of the flush or unusual traffic movements to take care of the lack of construction of [fol. 958] all sorts, and the lack of activity during the depressed period.

We have assumed, as we experienced last year and are experiencing now, that the railroads would have for a period of time an unusual increase in traffic, just as they had an unusual decrease in traffic by large percentages; that when the deferred work and business of the country is caught up through these unusual percentages of increase in activity, we will arrive at a normal condition of the country and a normal business of the country.

When that time will be depends on a lot of different conditions, but we have assumed in these statements that we would cease having an unusually large percentage of in-

crease in revenues and traffic somewhere around the latter part of 1938 and the first part of 1939.

In other words, 1939 will probably be a normal year, in our assumptions, and 1937 and 1938 will show abnormal increases.

Examiner Boyden: And in determining normalcy, have you used traffic conditions prior to the depression as a basis, or have you assumed some other level?

The Witness: We have used several levels. I would like to state the basis that we have used in trying to arrive at a proper normal year of earnings and expenses in presenting the detailed analysis by commodities, showing the [fol. 959] total cars each year for eight years ending 1935, the total number of tons of each commodity, the average carload, the total revenue, and the revenue per ton.

We have shown also the same information for nine months of 1936 compared with 1935, together with the average of the eight years of each commodity and each of these items, and below that what we believe will be a normal year, say in about 1939, of movement in each of these commodities.

Examiner Boyden: Is this another exhibit you have prepared?

The Witness: Yes. I am ready to present this now.

By Mr. Nicodemus:

Q. The next exhibit is a forecast of revenue, is it?

A. Freight revenue, together with a statement on the front of the exhibit showing not only the primary classifications of the different commodities, but the revenues by different classes of passenger traffic for eight years, the average for eight years, and the forecast for a normal year, the total revenues, freight and passenger, and the total expenses by the usual classifications, the percentage of the gross of each, and finally, at the bottom of the statement the amount available for interest, for the Denver & Rio Grande Western; and a similar statement, which can be a supplement [fol. 960] to that exhibit, perhaps, for the Denver & Salt Lake Western.

Examiner Kirby: Do you have a separate statement for the Denver & Salt Lake Western?

The Witness: Yes.

Examiner Kirby: We will let the latter statement be marked No. 119.

Mr. Nicodemus: The Denver & Salt Lake will be 119?

Examiner Kirby: The Denver & Rio Grande Western, which you first mentioned, is exhibit 118.

By Mr. Nicodemus:

Q. What assistance did you have in the preparation of these exhibits, 117, 118 and 119, can you tell that?

A. A conference was arranged at Chicago, at which we attempted to have to assist us in arriving at a proper estimate of freight traffic for a normal year, Mr. Hogan, Vice President of the Western Pacific; Mr. Perkins, Vice President of the Missouri Pacific; Mr. Taylor, Assistant Vice President of the Burlington; and Mr. Williams, the Chief Traffic Officer of the D. & R. G. W.

We were unable to get Mr. Hogan of the Western Pacific or a representative, but at the conference Mr. Taylor, assistant traffic vice president of the Burlington, who for many years previously until recently was vice president in charge of traffic of the D. & R. G. W.; Mr. J. A. Brown, As- [fol. 961] sistant Chief Traffic Officer of the Missouri Pacific; Mr. Carey, General Freight Agent of the D. & R. G. W., and myself, were present.

The statement for eight years of freight movement by commodities was before us, and we made a rather detailed study of each. The amount finally put down as the estimate of each commodity for a normal year was in every case agreed upon by Mr. Taylor, Mr. Brown, and myself. Mr. Carey dissented in most of these estimates, he having previously made, with the assistance of the traffic department of the Denver, an estimate for a normal year which was about 4 per cent above the business of last year, and which we believed did not reflect a proper estimate for a normal year.

But the three of us mentioned did agree on each item set forth in this statement, exhibit 118, of all of the commodities.

After the number of carloads was agreed upon, then the total tonnage, the average carload, and the revenue per car were figured out and stated for each item, and the total for freight arrived at of $27,884,000, and of passenger and other traffic sufficient to make a total of $30,734,000, which we present as our estimate of what a normal year will be for the Denver & Rio Grande Western.

The expenses are estimated at $22,220,682 on the basis of [fol. 962] the above revenue, with a final amount available for interest of the D. & R. G. W., of $5,198,318.

For the Denver & Salt Lake we estimate a total of $2,987,189 as a normal year's revenue, $1,697,600 as the operating expenses on the basis of handling the above traffic and properly maintaining the property, with a net amount available for interest of $1,093,065.

Q. Have you finished your description of the exhibit?

A. No, not quite. I have the description, but I would like to make some further observations on just how we did arrive at these estimates.

Q. Very good. Will you proceed with them?

A. I may say that both Mr. Brown and Mr. Taylor have expressed a willingness if necessary to support the estimates made and presented here as witnesses, if called upon.

In forecasting estimated operating revenues we first considered the volume of each commodity handled by the D. & R. G. W.—and I will say that applies also to the D. & S. L.—from January 1, 1928 to September 28, 1936, inclusive.

Second, the situation in the territory served locally by the Denver & Rio Grande Western and Denver & Salt Lake affecting each commodity at the present time and our idea of what that situation ought to be when a period of [fol. 963] normaley should be reached.

Third, the business situation in originating territory off-line governing or influencing commodities which do not originate on the Denver & Rio Grande Western, but can and will to some extent be handled by the two roads.

Fourth, the effect of the Dotsero Cutoff, which is increasing the D. & R. G. W. proportion of many lines of traffic over that handled in past years.

Where the commodity is particularly affected by the opening of the cutoff, it has been so marked in the exhibit containing the commodity detail.

Such comment does not mean that the commodity moves exclusively over the cutoff, but a substantial proportion is competitive or overhead traffic, and thus likely to be increased through availability of the cutoff.

In other words, this new line, shorter and placing the Denver in new position on through traffic, will, we think, attract a good deal of competitive and through traffic in larger proportion than we otherwise would have.

Fifth, recent trends in each commodity.

Sixth, present rate levels and prospective changes, especially with reference to emergency rate increases. As to these, many of them have been eliminated and only those retained which it is felt are most likely to be granted in [fol. 964] the general proceedings now pending before the Commission.

Mr. Nicodemus: We now offer the forecast of net income for the Denver, the parent company, and for the Salt Lake, separately, and ask that the first be designated exhibit 118 and the second exhibit 119.

Examiner Kirby: Any objection?

Mr. McKinney: The principal traffic going east which you will get because of the cutoff will be lumber, grapes, and citrus fruits, will it not?

The Witness: No; nearly every class of traffic moving from the Pacific Coast and the Northwest, canned goods, lumber, every sort of vegetables, fruits, and stuff produced in the West and imported through the West.

Mr. McKinney: During the last few months the car loadings of the road have increased sharply. Was that partially due to the fact of the longshoremen's strike on the Pacific Coast, or were most of these increases normal increases?

The Witness: No, they have not increased out of proportion the last few months. They have increased very rapidly the last fifteen months. Last year shows, I think, one of the highest increases of the Western lines on the Denver & Rio Grande Western. Car loadings have been materially heavier than in recent years.

[fol. 965] Mr. McKinney: I had specific reference to whether the loadings in the past two months had been affected peculiarly by the longshoremen's strike on the West Coast.

The Witness: No. The increased earnings the last two months are not as high as for the year 1936. The last week in January they were 18.33 per cent increase over last year, and for the period, 14.96 as against the increase of—I do not recall the per cent, but it was 24 or 25 per cent for the year 1936, but still comparing very favorably with all of the Western lines.

Mr. Fisher: May I ask you a question, Mr. Pyeatt?

In making this forecast of normal earnings, did you make a separate one for the cutoff by itself?

The Witness: No, we did not.

Mr. Fisher: Did I understand you to say that you started off on the basis of complete loss of surcharges, and then increased rates on certain commodities by what you felt was a reasonable expectation of obtaining in Ex Parte 115?

The Witness: Yes.

Mr. Fisher: Did you assume the same level of wages and wage scales as at present?

The Witness: Yes.

Examiner Boyden: As of what date does your normal year speak? It it a normal year in 1936?

[fol. 966] The Witness: No. The normal year we have in mind that we will reach and produce the figures that we have presented here for a normal year will be about 1939. That depends on quite a few factors. A good many things may occur to delay it or bring it on more quickly. But with the regular movement and increase of business of the country, we have assumed that we will reach that in about 1939.

Mr. Anderson: May I ask if you have made any allowance there for increase in commodity prices, that is, materials and supplies?

Mr. Nicodemus: In the maintenance items.

Mr. Anderson: Materials and supplies, coal, all those different commodities?

The Witness: Yes, we have assumed that those prices will be back pretty close to 1929.

Mr. Anderson: What increase over present prices have you allowed?

The Witness: We did not work out any detail on that, but we considered the prices prevailing through the period up to the end of 1929, and we based our estimate of expenses largely upon those existing during that period.

Mr. Anderson: Is not coal much higher than it was in 1929, now?

The Witness: It is a little higher. I would not say [fol. 967] a great deal higher. Other things are lower.

Mr. Anderson: Is lumber higher than it was in 1929?

The Witness: No, I do not think so. I do not have in mind the prices and I am not in touch with them, but I do not believe it is higher. I have in mind that it is perhaps lower than 1929.

Examiner Boyden: Have you provided, Mr. Pyeatt, for any increase in revenues other than those which represent

a recovery from depressed conditions, business depression?

The Witness: We allowed a very substantial increase from the so-called precious metal mining industry, which had descended to a very low level, even in 1928 and 1929, because of the price of silver, lead, and zinc. Those prices have materially improved and are considerably better than 1928 and 1929. That industry is becoming very active in that territory. There are other similar commodities where the depression after 1929 did not so materially affect them. They had already had their jolt.

Examiner Boyden: Did you assume that those commodities would go back to the pre-depression level or that they would go higher?

The Witness: Oh, much higher. Mining and scrap are higher now.

Examiner Boyden: Then you did allow for an improvement in all commodities, both in tons and in price, over the [fol. 968] pre-depression level?

The Witness: Did you say "over"?

Examiner Boyden: Over.

The Witness: No, not all. We allowed an increase in many of them because of the cutoff and the advantages of that which the road did not have prior to the depression.

Mr. Anderson: I was absent for a moment, Mr. Pyeatt. Possibly you stated, but just to get the information, what did you assume as the normal ratio of maintenance of way and structures and maintenance of equipment in the aggregate?

The Witness: 33 per cent for both of the gross of the normal year.

Mr. Anderson: You think that is a fair, normal maintenance, do you?

The Witness: I feel very sure of that.

Mr. Nicodemus: What do you figure on coal? Did you go back to the pre-depression level of coal?

The Witness: We did not figure that separately. We figured the cost of transportation based largely upon items of cost prior to 1930.

Examiner Boyden: And considering the effect of abnormal conditions in any one year, such as unseasonable weather affecting the fruit crop, and thereby affecting the traffic, you have given consideration to those factors, have [fol. 969] you not?

The Witness: Yes, we have tried to use an average production of those commodities over a period of years. We have used in every instance the average of the eight year period in arriving at our estimate of the normal year for that particular commodity, plus the Dotsero Cutoff and the recovery of traffic generally.

Mr. Anderson: I was following the work about maintenance a little further. What did you allow for maintenance of way and structures?

The Witness: 13 per cent of the gross.

Mr. Anderson: And for maintenance of equipment, 20 per cent?

The Witness: Yes.

By Mr. Nicodemus:

Q. What is your largest commodity on the Denver?

A. I would say coal. It is stated in this book.

Q. Have you estimated the increase in the coal movement over the pre-depression levels?

A. No.

Mr. Anderson: You estimated the decrease, below the average, from $4,262,630 to $3,948,750.

The Witness: The average? What is the high year?

Mr. Anderson: Six million, 1929.

The Witness: What is our estimate?

[fol. 970] Mr. Anderson: $3,948,750; but the average for the ten years is $4,262,630.

The Witness: Most of those years were very bad.

Mr. Anderson: You estimate a decrease, but in copper ore and concentrates and things of that kind you estimate an increase of over 400 per cent.

The Witness: There is no question about that, in my opinion.

Examiner Boyden: Have you any underlying data that you could present showing how you arrived at the normal year for each commodity?

The Witness: Nothing more than I have stated, and the note at the bottom of each commodity giving—well, not of each, but in most of them we have put a note which explains to some extent what we have used. But I have stated the elements that we used generally in arriving at these estimates.

Examiner Boyden: You did not state, of course, the elements that you considered in each particular commodity, but you say there in the exhibit in the form of a footnote——

The Witness: There is certain information about the average for eight years, the influence of the cutoff, the increased activity, the increased growth of the country, a comparison with 1936 business, nine months of 1936, and [fol. 971] the development of each commodity as we understand it. We tried to take into account all elements in arriving at our estimates. As I said, Mr. Taylor and Mr. Brown are with the two of the largest interchange lines with the Denver & Rio Grande Western, and Mr. Taylor was vice president in charge of traffic for many years.

They, after spending a good deal of time on each one, agreed on these estimates.

Examiner Kirby: Exhibit 119 is not in the same detail as exhibit 118.

The Witness: Not quite. We did not have the same amount of detail in that.

Examiner Kirby: You mean it was not available?

The Witness: No. I do not know that it was not available, but it was not furnished.

This is all that the Denver & Salt Lake furnished on request for the information by commodities.

By Mr. Nicodemus:

Q. Have you prepared an exhibit that combines the results of exhibits 118 and 119, to show the results for the system?

A. Yes.

Q. Will you describe that briefly?

A. This is a statement of total estimated revenues and expenses for a normal year, showing the D. & R. G. W. and the Denver & Salt Lake separately and combined.

[fol. 972] Q. The system earnings for a normal year are $33,721,189?

A. Correct. Expenses, $23,918,282.

Q. The amount available for interest?

A. $6,215,423.

Q. That estimate of operating revenues, you say, reflects your judgment, also the judgment of the traffic officials of the Burlington and the Missouri Pacific?

A. It does.

Q. And the Western Pacific?

A. The Western Pacific was not present.

Q. That is true, you say they were not. In your judgment that is a fair estimate?

A. It is.

Q. In your judgment is that estimate for operating expenses reasonably conservative?

A. It is.

Mr. Nicodemus: I now reoffer exhibits 118 and 119, and offer exhibit 120, as a group of exhibits.

Mr. Fisher: May I ask a question, sir?

In making up this statement for a normal year, did you use the Moffat Tunnel rental for the past year?

The Witness: We used the current Moffat tunnel revenue.

Mr. Fisher: It will increase?

The Witness: It will increase, but so will traffic.

Mr. Fisher: In the D. & R. G. statement by itself, before [fol. 973] being combined, that one, I take it, is assuming that the traffic agreement for the use of the joint line continues in effect as at present?

The Witness: Yes.

Examiner Kirby: Exhibit 117 has already been received.

Mr. Nicodemus: 118, 119 and 120, then.

Mr. Anderson: I think that this information may be useful, but I have not had a chance to examine it, so I would like to have it marked for identification until cross examination is completed, and then reoffered at that time. It may prove to be without foundation.

Examiner Kirby: Exhibits 118, 119 and 120 are received in evidence, subject to the general reservation of the right to move to strike after cross examination.

(Exhibits Nos. 118, 119 and 120, Witness Pyeatt, were received in evidence.)

Mr. Nicodemus: I will excuse Mr. Pyeatt temporarily.

Mr. Hoffman: May I ask Mr. Pyeatt a question in regard to a statement that he made?

Mr. Pyeatt, if I remember correctly this statement that you read, you referred to the sum of some $30,759,000 as representing additions and betterments from 1935 to 1936. Am I correct in my understanding?

The Witness: 1925.

Mr. Hoffman: 1925 to 1936?

[fol. 974] The Witness: The end of 1935, yes.

Mr. Hoffman: Did you make any similar statement for the period February 1, 1924 to February 1, 1929? That is the period during which the general mortgage was not cumulative.

The Witness: No. The statement includes the period from the time of reorganization and the new owners took charge of the Denver & Rio Grande Western, except that I believe that was December 20, 1924, and this is beginning January 1, 1925.

Mr. Hoffman: You also referred to a figure of $9,053,913, being a part of the cost of improvements charged to operating expenses that covered the same approximate ten year period, is that correct?

The Witness: Yes; 11 years.

Mr. Hoffman: Well, whatever the period is. Did you break that $9,000,000 figure down so that we might have so much of it as applied to the period from February 1, 1924 to February 1, 1929?

The Witness: No, no part of it was expended prior to January 1, 1925.

Mr. Hoffman: Would it be too much trouble to submit, just in round figures, how much of the $30,000,000 and how much of the $9,000,000 related to that five year period to which I refer?

[fol. 975] The Witness: None of it related to any period back of January 1, 1925.

Mr. Hoffman: Yes, but I do not think that I made myself clear to you, Mr. Pyeatt. From January 1, 1925, which is the period that you say this commences, until February 1, 1929, then, could we have the figure which shows how much of the $30,000,000 was expended during that period and how much of the $9,000,000 was expended during that period?

The Witness: Yes, I can separate that.

Mr. Hoffman: Would you be kind enough to?

The Witness: Give me that period again.

Mr. Hoffman: Ending February 1, 1929, and beginning whatever date these figures cover.

The Witness: February 1, 1929, from January 1, 1925.

Mr. Hoffman: Yes, sir. And would it be too much trouble also to let us know in round numbers how much of those two figures, if any, was expended after the Refunding In-

terest and the General Mortgage interest was defaulted? I think that was in 1934 some time.

Examiner Kirby: Can you do that?

The Witness: I think unquestionably we can. After the Refunding, the R. & I., defaulted?

Mr. Hoffman: After the Refunding and the General Mortgage defaulted, whichever happened to be first. I for-

[fol. 976] get offhand.

Examiner Kirby: You will supply that for the record, will you?

Mr. Nicodemus: We will supply that.

We have one more witness. I think we can finish with him very briefly, if we go ahead with him now before lunch.

Mr. Anderson: I would like to ask a question of Mr. Pyeatt.

Examiner Kirby: I assume the parties wish to defer cross examination of Mr. Pyeatt?

Mr. Anderson: I was going to ask if he could, without any serious trouble, tell me what the estimated earnings would be from now until 1939, when the normal year becomes effective, because we have to bridge that time, you know. Do you have any figures on that?

The Witness: I have not divided that up, and have made no study, no particular study, of how much of it will come during 1937 and 1938; but I believe it will all be realized in those two years; if not, a few months afterwards.

Mr. McKinney: May I ask what total traffic increase is expected in 1937 over 1936?

The Witness: I have no estimate on that.

Mr. Anderson: But you do estimate that when you reach

[fol. 977] a normal year, whenever it is, you could not even then earn your present fixed charges?

The Witness: Not quite.

Mr. Anderson: To say nothing of dividends on the preferred stock?

The Witness: That is obvious.

[fol. 978] LEONARD P. AYRES was sworn and testified as follows:

Direct examination.

By Mr. Nicodemus:

Q. Colonel, will you state your full name?

A. Leonard P. Ayres.

Q. Your occupation?

A. Banker.

Q. As a banker, have you made a specialty of any particular work?

A. Yes, of statistics, economics and finance.

Q. And normal years?

A. And normal years.

Q. How long have you pursued that particular work?

A. In that general field I have pursued that type of work all my adult years.

Q. Is it customary for your bank to issue a forecast of conditions?

A. No.

Q. Have you not a circular?

A. The bank issues, as many banks do, a monthly letter on general economic conditions, and in that connection from time to time talks about the probable future, but it does no forecasting as such.

Q. I was under the impression that your monthly fore-
[fol. 979] casts were referred to as being sometimes gloomy and ultra-conservative. Am I mistaken as to that?

A. I think, sir, you would be mistaken in assuming that there are any regular monthly forecasts from that source.

Q. But the fact is that for many years you have been engaged as an analysst in making economic studies?

A. Yes, sir.

Q. Have you in recent years directed your attention particularly to the Denver & Rio Grande Western Railway Company? I believe you came into the board.

A. I am a director of that road and have for a number of years past given special attention to its conditions and reports.

Q. Have you more recently and independently of Mr. Pyeatt made a study designed to forecast the earning power of the Denver & Rio Grande Western system in a normal year?

A. Yes, I have recently prepared such an estimate.

Q. Are you prepared to present it in the form of an exhibit?

A. I am.

Q. Would you like to make a preliminary statement respecting the exhibit, or shall I offer it?

A. If it be in order, I think that the best progress would be made by my going through the exhibit and briefly indicating what is there.

[fol. 980] Q. Our objective is progress, so we will go forward and do that.

Examiner Kirby: Suppose you produce the exhibit, and then we can identify it.

This will be identified as exhibit No. 121.

(Exhibit No. 121, Witness Ayres, was marked for identification.)

By Mr. Nicodemus:

Q. Proceed, Col. Ayres.

A. During the past ten years the operating revenues of this railroad have constituted an increasing proportion of the operating revenues of all Class I roads. There is a table on the first page and a diagram on the fourth page showing the percentage that the operating revenues of the Denver & Rio Grande Western have been during the past eleven years of the operating revenues of all Class I roads.

During that time there has been an almost steady increase, so that they were in 1926 approximately 53/100ths of 1 per cent of the revenues of all Class I roads, and in 1936 approximately 63/100ths of 1 per cent.

There was a slight depression dip in the general forward trend in 1933, but in general the road has been securing over the past decade a nearly constantly increasing proportion of the operating revenues of all the important roads.

[fol. 981] The question which I next considered was where this revenue came from, in broad terms. Did the increases come from the increases in proportion of freight carried or of passengers carried, or of other operating revenues. The results which are shown in the table on page 3 in the last three columns on the right hand side of that table give the proportions that the freight revenues of this rail-

road were of those of all Class I roads in each year, and the passenger revenues and the other revenues.

They show in brief that the increases that I have referred to have not only come predominantly from the freight, but that there have actually been in that period considerable shrinkages in the revenues from passenger and from other sources which have been a good deal more than made up by these steady increases in the freight revenue.

I then considered the question as to whether or not these increases from freight were from any special sorts of freight, or whether they were generally distributed in the different classes of freight, and the figures as to that are shown in table 3, which is on page 6.

The answer to the question is a negative one: There is no special localization of those increases.

There were in the period shown from 1928 through 1935, increases in the revenue as the proportion of the revenue [fol. 982] of all Class I roads in agriculture, animals, forests, manufacturing and miscellaneous, and less than carlot loadings, in fact, in all of the categories except those from mines, and a very minor decrease there.

So that we are clearly entitled to say that the evidence indicates that the increases in freight revenue of this road have come from well-distributed sources within the freight itself.

The question next to be considered was that of estimating the operating revenues of all Class I roads in a normal year, because if we have apparently trustworthy evidence as to the proportion of the totals that are the revenues of this road, clearly our next step must be to try to find the revenues of all Class I roads in a normal year.

I think that there is a method by which that may be done with considerable reliability, and it is in brief during the years over which our available records of such matters run, there has been a nearly constant relationship between the revenue ton miles of Class I railroads in this country, taken as a whole, and the number of factory workers engaged in what are designated as durable goods industries.

That relationship has been with considerable constancy that the roads have carried year in and year out an aver- [fol. 983] age of 100,000 revenue ton miles of freight for each factory worker engaged in the durable goods industry.

The authorities of the Federal Reserve System classify the products of industry and the workers in industry ac-

cording as they are designated as being in the durable goods industries and the non-durable goods industries.

Durable goods industries they classify as those making the things that are made from the durable materials, iron and steel, non-ferrous metals, lumber and its products, cement, stone, clay, glass, and the like, all lasting materials.

Those constitute in volume about half of all of the manufactured goods that we produce in this country. The workers engaged in making them constitute a little more than half of all the industrial workers of that sort.

In contradistinction there are the workers in the so-called non-durable goods industries, who are the people making things out of such materials as textiles, leather, paper, rubber, tobacco, gasoline, chemicals, and things of that sort.

Our records since 1919 about these industries are unusually full. The Bureau of the Census counts the workers each two years. The Bureau of Labor Statistics of the Department of Labor counts them each month. The Board of Governors of the Federal Reserve System re- [fol. 984] ports each month on the number of workers engaged in these two great groups of industries.

Therefore, we have running back as far as 1919, but not earlier, monthly data, official in character, very carefully compiled, and compiled by several governmental agencies in cooperation, telling us about these groups of workers.

In Table IV, which is on page 9, there appears a list of the durable goods workers by years from 1919 through 1936, and the ton miles of revenue freight of all Class I roads. One can see by looking at those figures that there was a considerable discrepancy between them in 1919 and 1920, and then they get to running in close consonance.

On the following page, which is page 10, there is a diagram, diagram 2, presenting in graphic form the facts that were in that table on the preceding page. Here the solid line shows from 1921 through 1936 the annual figures of revenue ton miles of all Class I roads while the dashed line shows the numbers of workers in the durable goods industries, the workers being in thousands and the ton miles in hundreds of thousands.

There has been a close correspondence throughout the period, a very close correspondence, from about 1925 through 1933, less close in agreement in the past three

[fol. 985] years, and the two lines are now close, more approaching each other.

The assumption in this report is that in the future, as in the past, there would be about 100,000 revenue ton miles of freight carried by our railroads for each factory worker engaged in the durable goods industries when conditions have returned to normal.

There is a way by which we may find out or compute what normal relationships are with regard to these makers of durable goods. We note over a very long term of years there has been very much less variation in the employment of workers in the making of non-durable goods than there has in those of the durable goods, the reason for that being that the non-durable goods includes such things as food, clothing, tobacco, gasoline, and the like, of which we use almost constant quantities in this and in other countries, whether in times of depression or in times of prosperity. So there is a considerable degree of constancy in the employment of those industries even in times of severe depression, as we have just been through.

The durable goods workers that we are talking about in connection with the revenue ton miles greatly increase in numbers in times of real prosperity and seriously suffer from unemployment in times of serious depression.

[fol. 986] On page 14, diagram 3 shows in its upper portion the numbers of factory workers in this country engaged in making durable goods, represented by the solid line, and the numbers making non-durable goods, represented by the dashed line. One notes that the fluctuations of the durable goods solid line are very much greater than those of the dashed line representing the non-durable goods workers. In this diagram the data are entered at the end of the quarter in each year.

In the lower part of the same diagram there is another line showing the percentage of all factory workers engaged in making durable goods.

In such years as those of the long stretch from 1922 through 1929, which in this matter I should consider a period of time including in the main or averaging out to be normal years, the percentage making durable goods turns out to be on the average something more than 51 per cent of the whole.

51.2 is the figure that I have used here.

I now have assumed that the number of workers making non-durable goods in a normal year in this country is 4,200,000. That is the number that were engaged in this kind of work in this past December. It is the number represented by the dashed line in this diagram as of the end of 1936. It is almost precisely the average for that period [fol. 987] from 1923 to 1929.

If we can say that that is the normal number of such workers in this country, and if we can also say that the workers in the durable goods industries represent 51.2 per cent of the total under normal conditions, then we have the figures by which we can estimate the total number of such workers and the number of ton miles of revenue freight to be expected in a normal year. Those figures are presented on page 15 and page 16.

In the paragraph below the table on page 16 the result of those computations is to show that a normal year the total freight revenue at 1 cent per ton mile of revenue freight would be $4,406,557,000.

In recent years the freight revenue has been about 81 per cent of all railway operating revenues of all Class I roads.

Using those figures, it is simple to estimate that on the basis described the operating revenues of all Class I roads in this normal year that we are discussing would be $5,440,193,829, which is a little more than the revenues of those roads in 1930.

At the beginning we said that the operating revenues of this road under discussion has been something more than .63 per cent in 1936 of the total operating revenues of all roads. We had realized that this percentage had been ris- [fol. 988] ing in recent years. I assume in this report we can justifiably believe that in the next year or two or three the relationship will be no less than that. It seems to me that we have reason to believe that the increase that has been running will be continued somewhat further, and that we should expect the Denver & Rio Grande Western to have in a normal year something more than .63 per cent of the operating revenues of all Class I roads.

On that basis, shown in the table on page 17, there are estimates of what the revenues of this railroad might be in a normal year at different fractions of a cent per ton mile. I express here the opinion that with the recent reductions the revenues per ton mile of Class I roads in general

in a normal year are likely to be something like .95 cent. That must be as yet somewhat a matter of opinion. I have worked it out here from 1 cent down to .95 cent.

At 1 cent the indicated revenue of this road from operations in a normal year would be the top figure, $34,273,221; at .95 cent, the bottom figure of $32,559,560.

That concludes the estimates themselves.

I considered further the relative reliability of these estimates, believing that the first figure, that the road should [fol. 989] be expected to earn at least .63 per cent of the operating revenues of all classes of roads, is a reliable figure, which we should expect to be greater rather than less.

Secondly, I believe that the relationship of 100,000 ton miles of revenue freight for each durable goods worker in our factories is of a lesser degree of accuracy, but probably should prove to be pretty reliable in the next few years because of the long history and the fact that the figures are again regaining their old relationships.

Third, I believe that the relationship that says that the workers in durable goods industries tend to be 51.2 per cent of those in all factory industries is probably of a lesser degree of reliability, but my own opinion is that it will prove to be about the same old relationship that it was before the depression.

Finally, the figure of approximately 4,200,000 in the non durable goods industries seems to be a figure of a considerable degree of reliability, although it is a figure already touched in December, and one might argue from that that further recovery might tend to lift it higher.

As to the time, one can only form his conclusion on the assumption that the conditions maintaining and the tendencies under way will continue for the next few years [fol. 990] about as they have in the recent past, unless there intervenes some important unpredictable development like the breaking out of a world war.

On the assumption that there will be no such major development of that sort, it would seem to me that the conditions that I have described here as those of a normal year should have developed in the calendar year 1938, but that the first full calendar year to be a normal year of the sort here considered would probably be 1939, and that the figure that I would give, myself, as the figure for that year for this railroad would be that of $32,559,560, shown on page 17.

By Mr. Nicodemus:

Q. That figure is for the railroad as distinguished from the system?

A. That is for the railroad, yes, as distinguished from the system.

Examiner Kirby: It does not embrace the Denver & Salt Lake?

Mr. Nicodemus: It does not embrace the Denver & Salt Lake.

The Witness: No.

Mr. Nicodemus: It should be compared with Mr. Pyeatt's figure of $30,734,000.

Now we offer the statement in evidence.

Mr. Anderson: No objection.

[fol. 991] Examiner Kirby: The exhibit is received.

(Exhibit No. 121, Witness Ayres, was received in evidence.)

Examiner Kirby: Any questions? Any cross examination?

Mr. Anderson: I would like to ask one question:

Colonel, what would you think would be the effect, upon the whole, of further inflation of credits and currency?

The Witness: It would tend, I think, to lift my figure further above Mr. Pyeatt's.

Mr. Anderson: Also operating expenses, of course?

The Witness: No doubt.

Mr. Anderson: The increase in the use of machinery due to increased costs of labor might reduce the number of people employed in heavy industry?

The Witness: In time.

Mr. Anderson: Yes. That is all.

Mr. Fisher: Col. Ayres, referring to the diagram on page 10 showing the parallel as between the ton miles and the workers in the durable goods industries, the workers' line is about the ton mile line, and the fact that it will approach again the ton mile line is based on the proposition that there will be no further diversion of traffic from railroads to other transportation agencies, is it not? With further diversion of traffic, the ton miles would not parallel [fol. 992] that?

The Witness: That would presumably be true, were it not for the fact that the output of these workers is daily

increasing, the output per man per day. Over this period there has been a steady increase and it has so far, by chance, I think, been just about the amount necessary to offset the diversion of traffic. As long as those trends continued in about those proportions, the relationships will maintain, but should they change, of course, that would not longer be so.

Mr. Fisher: You do not consider that the divergence between those two lines that have taken place since early in 1933 is due to diversion of traffic to trucks, etc.?

The Witness: I do not, no. I think those lines are going to close together again and be about as they were before.

Examiner Kirby: Any further questions?

Mr. Nicodemus: You are excused.

Examiner Kirby: If the record does not show, exhibit 121 is received in evidence.

* * * * * * *

[fol. 993] WITNESS WILLIAM WYER

Q. Now, the Examiners requested an Exhibit with respect to working capital. Have you prepared such an Exhibit?

A. Yes, sir. Mr. Boyden asked me if I could give an estimate as to the amount of working capital required by the new company, and I have prepared an exhibit based on that subject.

Q. Will you describe the exhibit?

A. This exhibit is in one sheet and is headed, "Cash in hands of Treasurer last day of each month 1926, 1935", and you will note from that it has fallen as low as $260,000 on the last day of March in 1935, and it has been as high as $7,120,000 the last day of November, 1929.

Now, the second half of this exhibit shows the cash on hand of various railroads in the Western District as of December 31, 1935. I have excluded railroads which were in Trusteeship. These are railroads not operating under the jurisdiction of any court.

I feel as to the amount of working capital—and these figures which I have presented on the exhibit have had some influence on my answer, as well as my own experience with the Denver—that the working capital should never fall [fol. 994] below $1,000,000, and that it would be much better if it could be in the neighborhood of $4,000,000 or $5,000,000; as far as the plan is concerned, we do not know how

much cash the new company is likely to start with, because we cannot forecast the operations of the Trustees. We would assume, the way the plan is drawn, that we would start in with the cash, operating cash, which the Trustees have, but because of the uncertainty as to what that is likely to amount to, I feel that the amount of treasury bonds should be reasonably large so that if the trustees should happen to turn the property over at a time when the cash was nearer the one million dollar mark than it was the four million dollar mark, that we would be protected as to working capital.

Examiner Boyden: Is that estimate of working capital for the proposed new corporation, the consolidated and reorganized company?

The Witness: Yes. I would place the limits at somewhere between one million dollars and five million dollars for the new consolidated company, including the Denver and Salt Lake. These figures here, of course, are just for the D. & R. G. W., on Exhibit No. 124.

Examiner Boyden: If you can permit your cash to run as low as one million dollars, what would be the need for providing as high as five million dollars cash?

[fol. 995] The Witness: Well, what you need a higher figure for is this:

When you are making Additions and Betterments to your property, if you have to borrow for any of those Additions and betterments, you do not want to be in the position where you have to borrow every time that you decide to make an improvement. We want some cash to put into Additions and Betterments, with the idea that when that amount has reached a large enough figure, you will be in position to sell some bonds, and you have to have some leeway there.

Of course, if you were to operate this property and pay for all your Additions and Betterments out of income, and never have to borrow, you could get along on a smaller amount of working capital than you could otherwise, but there are things like that which have to be taken care of currently, and when you cannot go out and reimburse yourself currently.

Examiner Boyden: Under your plan of reorganization, which provides for various sinking funds, would not the matter of Additions and Betterments be taken care of, and

under those circumstances would not a one million dollar figure be sufficient?

The Witness: They would be taken care of to a great deal better extent than they have been in the past. I do not [fol. 996] believe they would be fully taken care of. I would expect that there would be some occasions when you would have to be borrowing for Additions and Betterments.

[fol. 997] By Mr. Fooshee:

Q. Representing the Guaranty Trust Company of New York as Trustee of the Rio Grande Western Railway Company First Consolidated Mortgage, (RGW Consols) due 1949.

Mr. Wyer, the Plan proposes that the Utah Fuel stock which is now pledged, the total of that stock which is now pledged under the Denver & Rio Grande Western Consolidated Mortgage as a first lien thereon shall be placed under the general income mortgage as a first lien, does it not?

A. Yes.

Q. Is there any other attribution of income to the Utah Fuel Stock other than the $83,333 shown in exhibit 107, I think it is, which was taken on the basis of being a dividend of $250,000 cash paid in 1934 and distributing that dividend [fol. 998] over three distribution years, 1932, 1933, and 1934?

A. There is no other attribution of income to that stock.

Q. Yes. Has there been a valuation of the properties of the Utah Fuel Company made for purposes of this reorganization plan?

A. No, there has been no appraisal or valuation made specifically for this purpose.

Q. Exhibit 36 states that the property of the Utah Fuel Company was valued on its consolidated balance sheet as of December 31, 1935, at $15,118,543, less reserves of $3,149,875.

The properties are value at that on the balance sheet; how was that carried, was that carried at cost, that is page 2 of exhibit 36?

A. I cannot tell you definitely how that figure originally came onto the balance of the Utah Fuel Company.

Q. I thought it was in the record, although I was unable to place my hand on it, in response to a prior question, that

it had been cost of the properties to the Utah Fuel Company.

A. Well, that is my impression, but I am not entirely certain as to that.

Q. The stock of the Utah Fuel Company was sold pursuant to the levy on the judgment of the Equitable Trust Company in 1918, wasn't it?

[fol. 999] A. Yes.

Q. Do you recall at what amount that stock was bought in, was sold for?

A. No, I do not.

Q. You do not recall that it was approximately ten million dollars; that would not refresh your memory? I do not want to make that statement.

A. I think that is correct. I am willing to accept your statement on that.

Q. So that the equity in that stock, the equity in that stock is pledged under this Denver & Rio Grande Western Consolidated mortgage?

A. I think it was. That is going back a long ways and is something that I have not looked into for a long time, but I think there was some debt outstanding ahead of the stock at that time; I do not recall just how much.

Q. It might refresh your memory if I should point out that exhibit 36, page 1, shows that on June 30, 1918, the equity in the stock owned by the Denver & Rio Grande Western was sold under a decree, without stating the amount for which it was sold, and that that page also states that all of the stock was pledged under the Denver & Rio Grande Western First Consolidated Mortgage by indenture dated May 23, 1901—that is 17 years, approximately, before that—I do not know whether that would refresh your recol-

[fol. 1000] lection on the point of letting you say that that equity was the equity remaining after the pledge of the stock to the Denver & Rio Grande Western Consolidated.

A. Well, what I had in mind was that there were some debts of the Utah Fuel Company outstanding and when I said the equity in the stock——

Q. Yes.

A. I had in mind that debt.

Q. Yes.

A. No, of course, the sale at that time was to somebody who expected to own the D. & R. G. and the pledge under

the R. G. W. Consols would not be ahead of the equity, I would not think, as a business proposition, under those circumstances, I would not expect that pledge to come ahead of the equity remaining in the stock at that time.

That is, those bonds would be outstanding against the D. & R. G. property in the same amount, anyway, I should think.

Now, I might not be entirely correct as to that, but I did not, at any rate, have in mind that the pledge to the R. G. W. Consols came ahead of the equity for which ten million dollars was paid in 1918.

Q. Well, you do not know that that pledge made in 1901 was not a pledge, an existing pledge at the time the stock [fol. 1001] was sold?

A. No, I know it was.

Q. You know it was?

A. Yes.

Q. That is sufficient on that, I think.

The earnings, the consolidated income account for the Utah Fuel Company is shown only for the years 1930 to 1935, inclusive?

A. Yes.

Q. Do you know whether the earnings of income as shown in exhibit A, and exhibit 36, are representative of the income for the years immediately preceding 1930?

A. Oh, I think their earnings were a little better prior to 1930 than they were during these years.

Q. Had one of the large purchasers of coal, namely, the Missouri Pacific, cut down the amount of its purchases in 1930?

A. Yes.

Q. From what they were prior to that?

A. It had.

Q. That is the same Missouri Pacific Railroad, isn't it, that is one of the two roads which under the plan would retain the common stock of this company?

A. Yes, that or the successor company.

* * * * * * *

[fol. 1002] By Mr. Hoffman:

Q. Are you willing, for the purpose of this record, to accept Colonel Ayres' testimony that 1939 is a normal year, or will be a normal year?

A. Yes.

Q. Are you willing, for the purpose of this record, to accept Mr. Pyeatt's testimony with respect to the forecast of earnings for a normal year?

A. Yes.

[fol. 1003] Q. What is your definition of "a normal year?"

A. "A normal year" is the year which represents an average condition that you can expect in the future, and I would expect earnings in the future to run considerably above or considerably below the normal year.

Q. So that a normal year would, on the average, take into account the peaks and valleys of earnings, profits as well as deficits? Is that right?

A. Yes.

Q. And a normal year would mean that if you took a reasonably representative period of earnings and losses, a large number, whatever they may be, you should arrive at approximately that figure which we call a normal year's earnings. Is that right?

A. That is what I would understand about it.

. . . . . .

[fol. 1004] WITNESS WILLIAM WYER

. . . . . .

Q. $6,700,000. On the basis of earnings for the test period, there were no earnings for the common stock, were there? The test period.

A. No.

Q. On the basis of the normal year there were no earnings for the common stock, were there?

A. On the basis of Mr. Pyeatt's estimate for the normal year, there are no earnings for the common stock.

. . . . . .

[fol. 1005] Q. What do you give them for their equity in the Utah Fuel?

A. We do not consider that there is any equity in the Utah Fuel at the present time.

Q. No equity in assets?

A. No equity on the basis which we have appraised it in connection with the Utah Fuel in this plan.

[fol. 1006] Q. No equity in either assets or earnings?

A. No.

Q. You consider the Utah Fuel as worthless?

A. No, we have made an allowance to the R. G. W. 4's of 1949 for their lien on the Utah Fuel. We think that has absorbed the whole value of the Utah Fuel.

Q. On the basis of earning power?

A. If we had done it on the basis of earning power, it would have been, yes. The Utah Fuel has not had any earnings for five or six years.

Q. And on the basis of asset value?

A. On the basis of book value it has a very substantial value, but I do not know what good that is to you, if you are earning deficits all the time.

Q. Have you any opinion yourself as to the value of the Utah Fuel stock?

A. Not in dollars and cents, but I have a general opinion on it.

Q. I mean in dollars and cents.

A. I have not attempted to set an exact value on the Utah Fuel stock.

Q. Have you an approximate figure in mind?

A. No.

Q. Any figure which you can mention, by which we may guide ourselves here?

[fol. 100.] A. No, I have tried to present all the facts about the Utah Fuel Company here and all the basis on which we appraised it for the purpose of the plan, and that is as much as I can say by way of an exact figure.

Q. If I may summarize it, we will take $83,000 of income as being an amount which we will attribute to the Utah Fuel, and that is how we will deal with that stock under the various mortgages which may be entitled to it. That is about the substance of it?

A. That is where we arrive, after considering all the factors.

Q. That is about the substance of it?

A. That is not the substance of all the information which we have put in about the Utah Fuel Company.

Q. It works out that way?

A. Yes, sir.

* * * * * * *

[fol. 1008] J. S. Pyeatt testified further as follows:

Direct examination (Cont.):

The Witness: I have a few corrections which I would like to make in the previous record. They are quite brief, and I can read them.

Examiner Boyden: Is it not satisfactory to put them into the record?

The Witness: Yes, it is satisfactory.

Examiner Boyden: Will you offer the exhibit, please?

The Witness: Page 808, line 15, the word "figure" should be "annually".

Page 813, line 20, insert "owned" after "number".

Line 21, the figures "6.5" should be "5.5".

Line 22, "6.7" should be "6.9".

Page 835, line 22, the word "revenue" should be "rental".

Page 836, line 2, the word "traffic" should be "trackage".

[fol. 1009] At the previous hearing Exhibit No. 117 was presented showing, among other things, estimated net and gross ton miles for the normal year. After that exhibit was submitted, we discovered a mistake arising out of the figure for the average haul, which we took to be 240 and it should be 249. That resulted in a change in the gross ton miles for the normal year of 7,228,028,000 in place of 6,966,792,000, a percentage of increase of 3.75.

Net ton miles of 2,659,282,000 instead of 2,563,173,000.

By Mr. Hodges:

Q. Mr. Pyeatt, have you prepared an exhibit marked 117-A to submit, showing the corrections in Exhibit No. 117?

A. No, we have just made this correction.

Q. This document? (Producing paper.)

A. Yes.

Examiner Boyden: Do you offer it for the record?

Mr. Hodges: We offer it for the record.

Examiner Boyden: It is received as Exhibit No. 127.

Mr. Hodges: It is marked Exhibit No. 117-A.

Examiner Boyden: I understood you were correcting Exhibit No. 117-A.

Mr. Hodges: Correcting Exhibit No. 117 by Exhibit No. 117-A.

Examiner Boyden: We will receive it, then, as Exhibit No. 117-A.

[fol. 1010] (Exhibit No. 117-A, Witness Pyeatt, received in evidence.)

By Mr. Hodges:

Q. Does Exhibit No. 117-A show all the corrections which are necessitated in Exhibit No. 117?

A. As to gross and net ton miles.

At page 838 of the record Mr. Hoffman requested the total amount of improvements and maintenance charges in connection therewith during the period when no interest was paid on general 5's, February 5, 1924, to January 21, 1929, and from date of default of Refunding and Improvements or the Generals, whichever was first, down through 1936.

We have that exhibit.

Mr. Hodges.: What is the number of that exhibit? We offer that exhibit in evidence.

Examiner Boyden: It will be received as Exhibit No. 127, if there is no objection.

(Exhibit No. 127, Witness Pyeatt, received in evidence.)

Mr. Hodges: That is a new exhibit and will take a new number.

Examiner Boyden: It is received as Exhibit No. 127.

Mr. Hodges: Anything further, Mr. Pyeatt?

The Witness: Yes. In our estimate of taxes there appears an item of $2,700,000 for the normal year to cover [fol. 1011] taxes. Unfortunately, the memorandum which we took that from did not include the income taxes and undistributed profits taxes. That amounts to approximately $350,000, income taxes, and $75,000 on undistributed profits taxes for the Denver & Rio Grande Western and $97,000 for income taxes, and $93,000 undistributed profits tax, estimated, of course, for the Denver & Salt Lake.

Examiner Boyden: For what year is that, Mr. Pyeatt?

The Witness: That is for the normal year, estimated. That is not the total items because the amount of $2,700,000 was somewhat above the estimate of the total items, but if the A. and B. fund is not used to run through depreciation and appropriating for additions and betterments, that would result in a deficiency in taxes under our estimate of $225,000

on the D. & R. G. W., and approximately $172,000 on the Denver & Salt Lake, or a total of $397,000.

But if, as I assume may be done, there is a charge to depreciation and maintenance of way to cover expenditures for additions and betterments, and we use the depreciation for the additions and betterments to the extent appropriated for that, that would result in a deficiency of $16,000 for the Denver & Rio Grande Western in our estimate as made, and $159,000 for the Denver & Salt Lake, or a total of $175,000.

* * * * * * *

[fol. 1012] Q. Mr. Pyeatt, on page 821 of the record I am going to read what you said, because I think it is an error in transcribing, and I would like to get it straight before I go ahead. At page 821 of the record, in reply to a question, "What is meant by a normal year", I refer to an answer that begins at the bottom of page 820. In reply to the question, "What is meant by a normal year", your testimony, as transcribed, reads:

"It is the year when occur all of the flush or unusual traffic movements to take care of the lack of construction of all sorts, and the lack of activity during the depressed period."

Is that correctly transcribed?

A. I think it may be correctly transcribed. If the meaning of it is not clear, I would like to say that it is the time after all of these deferred things and the extraordinary activity by reason of them have occurred.

[fol. 1013] Q. Would this temporary intervening period of flush or unusual traffic, to be followed by a dropping back a little way to normal, be experienced equally in the case of every class of commodity?

A. No, I would not think so.

* * * * * * *

[fol. 1014] By Examiner Kirby:

Q. Mr. Pyeatt, will you please refer to your exhibit 118?

A. I haven't these exhibits numbered.

[fol. 1015] Q. That is the data study?

A. Yes.

Q. Page 2. In arriving at your total freight revenues for the normal year, that is, your forecast?

A. Yes.

Q. Have you made any deduction or correction for switching absorptions and corrections?

A. No, sir; this is the total revenue, including switching. We cut that out, this is the net.

Q. Well, your data for the period seems to indicate that you did make deductions in the use of the data, and is the explanation of this that having made the deductions in the data, you therefore arrive at the net result without making any further deductions in your forecast?

A. Yes; this is the total revenue after any payments or collections that we may make, as I understand it.

Q. No further deduction is necessary, then in your forecast?

A. No.

Q. Is that correct?

A. That is correct.

Q. Now, throughout this exhibit, 118, have you in all instances applied a revenue rate per ton?

A. Yes.

Q. In the forecast, which does not reflect the increases [fol. 1016] due to emergency surcharges.

A. Well, increases we thought would be made were considered in that. We do not know what they would be, but we felt that the present hearing on that would result in a material increase in certain commodities.

Q. In other words, you are anticipating increases in the rates?

A. Yes, to some extent.

Q. In the figures, though, extending over the eight-year period, there are reflected in the revenues per ton for the last year or so, the effect of the emergency surcharges, are there not?

A. That is correct.

Q. In applying the averages per ton derived from this basic data, have you made a compensating adjustment for the effect of the emergency surcharges?

A. No, I do not think that we did. I think we took into consideration that the surcharge would be canceled and that as result of the hearing now in progress, that a great many of those rates would be restored.

Q. Which hearing are you referring to?

A. Well, the application for increases in rates.

Q. So, in effect, you have left in the influence of the emergency surcharges, have you not?

A. Yes, I think we took the rates existing up to the last [fol. 1017] date available, 1936, and considered those rates in connection with the rates of previous years and what we thought they might be in a normal year.

Q. You have not used a straight average over the years, however, have you, for the revenue per ton?

A. No.

Q. Well, now, just one or two questions covering quite a number of items.

I notice that in the application of the revenue per ton in your forecast, the rate on individual commodities in several instances coincides with the average revenue per ton for 1935, and in some of those instances the 1936 revenue per ton for the entire year 1936 is less than the 1935 rate.

You did not have the full year available at the time you made up this exhibit, did you?

A. No, I think we had about nine months.

Q. And we have now asked Mr. Wyer to supplement that commodity statement so that we will have the results for the full year 1936. That might in some cases change the average for the nine months which you have shown, would it not?

A. It might.

Q. In those cases where the 1936 revenue per ton is considerably less than the 1935 revenue per ton, would you [fol. 1018] still claim that the application of the 1935 rates in your forecast is proper?

A. Well, I think we took into consideration the rates running over the eight year period here, and the fact that there is a variation in the rates on many commodities every year, every six months, to put in an estimated rate for the normal year that was felt to be fair reflection of what it would be. Of course, it is an estimate, a guess.

Q. It is a judgment figure?

A. Yes.

Q. However, I won't pursue it further except to ask you this question: On lumber, shingles, and lath, on page 91, your forecast rate per ton is $2.73 and the 1935 rate is $2.73; there they coincide?

A. Yes.

Q. As a matter of fact, the 1936 rate is only $2.63; that is to be developed from the information to be furnished?

A. That is correct, and by the same token, the rate for the first nine months of 1935 was $2.70 as against $2.73 for the year, so that does vary a good deal according to the movements, the destination.

Q. I notice that the 1936 rate was somewhat less, $2.63. Would that cause you now to change the rate which you [fol. 1019] applied in the forecast for that particular item?

A. No, I do not think I would change that. Lumber was one of the commodities that we estimated might be increased as result of the present application.

. . . . . .

[fol. 1020] Q. You have been asked by Examiner Kirby about your treatment of emergency surcharges. I direct your attention to your exhibit 118 and ask if you have not eliminated the effect of the emergency surcharges in some instances, calling atteniton to pages 130, 128, 123, 120, 118, 114, 108, and 80.

A. I do not understand so. I do not——

Q. I call your attention first to page 130. Will you look at it, please? First, as to tractors and parts, ICC Classification No. 582; the bottom note says; "Average revenue per ton based on present levels less the emergency increase," I just want to be sure that I don't misunderstand what that means.

A. Yes, that clearly states that it is on present levels.

Q. Where there is such a notation, that is the meaning of [fol. 1021] it, is it not?

A. Yes, I assume so. I did not put in any of those figures. They were all figured in Mr. Wyer's office and in our consideration of the revenues and expenses in that meeting that we had in Chicago with Mr. Brown and Mr. Taylor at that time, we did not make any chances on account of emergency rates because it hadn't then been cancelled.

Q. Well, I will call your attention to page 128 of your testimony, you haven't it before you, I will read a question that was propounded to you then by Mr. Fisher:

> "Did I understand you to say that you started off on the basis of complete loss of surcharges, plus the increased rates on certain commodities and what you

felt was reasonable expectation of obtaining in Ex Parte 115?"

"The Witness, yes."

Shall we alter that in any way in view of your present testimony, or does that stand as being the process of arriving at these forecasts?

A. Well, it appears to need altering in view of my two statements of it. We made our first statement in December. That was brought back in carloads, and the tons, the rate per ton and the revenues were figured in Mr. Wyer's office. [fol. 1022] And I think it is better to state that I was perhaps not as well informed on that as I should have been, and that I was not sure of it except that we did not give consideration to the elimination of the surcharge in December when we made up our first figures. We apparently have in this final draft.

* * * * * * *

[fol. 1023] T. A. Hamilton, was sworn and testified as follows:

Direct examination.

By Mr. Clay:

Q. Will you give your name for the record, Mr. Hamilton?

A. T. A. Hamilton; residence, Houston, Texas.

Q. State briefly your previous qualifications and experience.

A. I began railroading in 1916 as telegrapher on the Canadian Pacific. I have spent some forty years in active railroad service and in employment directly related. In [fol. 1024] my railroad experience I have served as telegrapher, station clerk, bill clerk, chief clerk to Superintendent, Yard Master, Chief Clerk to General Manager, Assistant General Manager, Assistant to Operating Vice President, Assistant to the President, Vice President in charge of operations, Vice President and Comptroller and President.

My service has been with the Canadian Pacific, Chicago and Grand Trunk, Missouri Pacific, Illinois Central, Louis-

ville and Nashville, St. Louis-San Francisco, International Great Northern.

I left the Operating Vice Presidency of the St. Louis-San Francisco to take the Presidency of the International-Great Northern, at its reorganization in 1922, and remained in that capacity until its sale to the New Orleans, Texas and Mexico and its absorption into the Missouri Pacific System.

Since that time I have been engaged in consulting work, inspections of railroad properties and matters of that kind for various banking interests.

In August 1934 I joined the Railroad Division of the Reconstruction Finance Corporation as an Examiner and engaged principally in outdoor work, field work, and am still in that employment.

Q. What is your first exhibit, Mr. Hamilton?

A. A map of the Denver and Rio Grande, The Denver and [fol. 1025] Salt Lake and the Denver and Salt Lake Western, which are separately colored for purposes of easy identification.

Mr. Clay: I would like to offer this map as Exhibit No. 129.

Examiner Boyden: It will be marked Exhibit No. 129, for identification.

(Exhibit No. 129, Witness Hamilton, was marked for identification.)

By Mr. Clay:

Q. Would you state what inspection you have made of this property recently, Mr. Hamilton?

A. I made a daylight inspection in company with the Maintenance Engineer of the Denver and Rio Grande Western of the line of that road, from Denver via Pueblo to Dotsero on May 12th of this year, and of the Denver and Salt Lake Western and the main line of the Denver and Salt Lake, from Dotsero to Orestod and Orestod to Utah Junction, Denver, on May 13th. I subsequently followed the line of the Denver and Salt Lake from Steamboat Springs into Utah Junction, on May 22nd, in company with the Chief Engineer of that property.

Q. Looking at this map, would you define for the purposes of your testimony the stretch of line which is marked in red? How will you describe that?

[fol. 1026] A. That is the Denver and Salt Lake Western, known as the Cut-off.

Q. You mention it as the Cut-off?

A. Yes, sir, for easy reference, the Cut-off.

Q. And the line from Bond to Denver?

A. Yes, sir. The Denver and Salt Lake Railroad, one of the railroads which we have termed the Moffat route.

Q. That leaves only one other mileage?

A. The combination of those two we have spoken of as the Cut-off-Moffat route, for the sake of easy reference.

Q. How about the line from Bond to Craig?

A. That is from Orestod, if you will pardon me, to Craig, referred to as the Denver and Salt Lake, and specified in each reference as the line north of Dotsero or between Orestod and Craig.

Q. What are your next exhibits?

A. I have the profile of the main line and of the Denver and Rio Grande Western from Denver to Ogden, of the Denver and Salt Lake Western from Dotsero to Orestod, and the Denver and Salt Lake from Orestod to Denver or Utah Junction.

In connection with that I have in tabular form a description of the alignment and the grades on the mileage re-[fol. 1027] ferred to in the profile.

Examiner Boyden: Mark the map Exhibit No. 130 and the tabulation Exhibit No. 131.

(Exhibits Nos. 130 and 131, Witness Hamilton, were marked for identification.)

Mr. Clay: I would like to offer these two exhibits.

By Mr. Clay:

Q. Will you please comment on Exhibits Numbers 130 and 131?

A. One is explanatory or explains the other. The second one is a statement in tabular form of the profile.

The purpose of the exhibits is to show the handicaps of adverse grades and curvature encountered respectively, on the route over Tennessee Pass, that is Denver via Pueblo to Dotsero and beyond, and the Cut-off route.

In moving traffic westbound from Denver to Dotsero via the Tennessee Pass route, that is, via Pueblo, we find 181.14

miles of opposing grade, as compared with 52.44 miles of opposing grade westbound over the Cut-off-Moffat route.

Q. Will you give more detail on those grades?

A. Yes, sir, I was about to do so.

Of eight-tenths and less there are 86.6 miles on the Ten- [fol. 1028] nessee pass route and 10.70 on the Cut-off-Moffat route.

Over eight-tenths and up to and including 1 per cent, 37.10 miles via the Tennessee Pass route and 1.87 miles via the Cut-off-Moffat route.

Over 1 per cent to and including 1-1/2 per cent, 55.6 miles via the Tennessee Pass route and 5.27 miles via the Cut-off-Moffat route.

Examiner Boyden: Just a minute, Mr. Hamilton. You say over one, What was the last class which you read?

The Witness: Over 1 per cent to and including 1-1/2 per cent.

Then over 1-1/2 per cent to and including 2 per cent, 1.84 miles via the Tennessee pass route and 34.60 miles via the Cut-off-Moffat route.

By Mr. Clay:

Q. That is the movement westward from Denver to Dotsero?

A. Yes, sir, that is opposed to westbound traffic.

Q. How about on eastbound traffic?

A. Pardon me, I might say, parenthetically, the heavy freight movement over both routes is preponderantly eastbound.

The grades opposed to eastbound traffic are eight-tenths of 1 per cent and less 57.30 miles via the Tennessee Pass route and 70.37 miles via the Cut-off-Moffat route. Over [fol. 1029] eight-tenths to 1 per cent, and including 1 per cent, 24.20 miles via the Tennessee Pass route and 13.39 miles over the Moffat-Cut-off route.

Over 1 to and including 1-1/2, 30.15 miles via Tennessee Pass and 2.94 via the Cut-off.

Over 1-1/2 to and including 2 per cent, 3.30 miles via the Tennessee Pass and 5.10 miles over the Cut-off-Moffat route.

Over 2 per cent to 2-1/2, .44 miles over the Tennessee Pass route. There are no grades above 2 per cent eastbound on the Cut-off-Moffat route.

Over 2-1/2 per cent to 3 per cent, Tennessee Pass Route, 11.80 miles and over 3 per cent .40 miles.

The total miles of opposing grades, that is, grades opposed to Eastbound traffic over the Tennessee pass are 127.59 as against 91.80 over the Cut-off-Moffat route.

Q. In other words, on eastbound traffic there is a striking advantage for the Cut-off-Moffat route over the Tennessee Pass route?

A. Yes, sir, and those are the grades opposed to the preponderantly heavy traffic.

The amount of level line on the two routes is 34 miles via Tennessee Pass and 22.47 via the Cut-off-Moffat [fol. 1030] route.

As to distance, the total distance between Dotsero and Denver is 175 miles shorter via the Cut-off-Moffat route than over Tennessee Pass.

Q. Pardon me, is that 175 or 176?

A. 175, sir.

Based upon the figures which I have quoted from the profile and the company tabulation, it is apparent that the most advantageous route for freight traffic, and incidentally for passenger traffic, but especially for freight traffic, of which the preponderant volume is eastbound, is over the Cut-off-Moffat route.

Q. That is so far as grades are concerned. Will you comment now on curves?

A. Yes, sir. A comparison of the curvature on the Tennessee Pass and the Cut-off-Moffat routes is:

5 degrees and less, Tennessee Pass route 96.81 miles, Cut-off-Moffat Route 39.73 miles.

Over 5 degrees to and including 7, 21.36 miles and 18.63 miles respectively.

Over 7 degrees to and including 8, 2.81 via Tennessee Pass and 2.23 via the Cut-off-Moffat route.

Over 8 degrees to 10 degrees, 3.30 miles via Tennessee Pass and 10.50 via the Cut-off-Moffat route.

[fol. 1031] Over 10 degrees to and including 12, 2.69 miles via Tennessee Pass and 7.69 via the Cut-Off-Moffat route.

Over 12 degrees to 13 degrees, 1.96 miles Tennessee Pass and 2.20 via the Cut-Off-Moffat route.

There is no curvature on the Tennessee Pass route above 13 degrees. On the Cut-off-Moffat route there is .9 miles ranging from 15 to 16 degrees and .14 of a mile with a curve of 16 degrees and 36 minutes.

I might say, in setting up this table, or in quoting the figures which I have put into the record, we have dropped everything below 30 minutes, and kicked up everything above, in rounding out the degrees.

Q. This information was obtained from the track charts of the railroad?

A. From the Engineering records of the railroad, yes, sir. The Tennessee Pass route has 58 per cent more mileage than the Cut-off route.

There is an excess on the Moffat route of curvature of over 8 degrees.

When I went to look at the property, I heard a great deal about one-sixth degree curvature on the Moffat route, and found, when I came to see it, there was 23 100ths of a mile [fol. 1032] in the aggregate, and I saw one of the curves, the longer one, which was in process of reduction to twelve degrees, the last day I was on the railroad.

Q. Referring to Exhibit No. 150, how did the two roads compare with reference to the highest point, that the road has to cross?

A. The summit at Tennessee Pass is approximately 2000 feet higher than the apex in the Moffat tunnel.

In connection with the grades that we have been talking about, it may be of interest to state what helper service is operated.

Eastbound from Minturn on the Tennessee Pass, the summit, helper service is operated the entire distance of 21 miles on freight trains.

On the other side of the pass, going up from the gorge westbound, helper service is not operated although the grades run pretty close to 1.4 per cent.

On the Moffat line from Tabernash through to the East Portal of the tunnel helpers are regularly employed. The district is about 16 miles. Westbound from Denver to the East Portal of the Tunnel helper engines are employed over a 50 mile territory whenever the tonnage of the train exceeds the rating of a single locomotive. Our examination of train sheets for a representative period indicates that [fol. 1033] that was the case about half the time. That is, about one-half of the trains had to be helped up.

Q. Comparing the helper service on the two lines, would you characterize one as the most burdensome helper service, or, rather, on which there is a need of more helper service?

A. You have got a long stretch of 1.4 per cent grade up the east side of Tennessee Pass, that is, up to the summit, on which there is no helper service, and of course they have to help up the 3 per cent grade eastbound on the other side of Tennessee Pass, and there is helper service on both sides of the Moffat Tunnel. The fact that helpers are not operated westbound up the Tennessee pass of course lightens the train load.

Q. What is your next Exhibit?

A. I have an Exhibit here which shows the rail and ballast characteristics of the two routes, that is, The Tennessee Pass Route and the Cut-Off-Moffat route.

I also have an exhibit which describes the tunnels.

Q. May I interrupt a moment?

A. Yes, sir.

Mr. Clay: May it please the Commission, we have the Exhibits here which I think would best be discussed in rela- [fol. 1034] tion to each other.

By Mr. Clay:

Q. What is the next exhibit?

A. This describes the tunnels between Denver and Orestod and Pueblo and Dotsero, and Dotsero and Orestod and third the bridging on the routes.

Examiner Boyden: Mark the statement of rail and ballast characteristics, 132, and the description of tunnels No. 133, and the Bridge Exhibit No. 134.

(Exhibits Numbers 132, 133 and 134, Witness Hamilton, were marked for identification.)

Mr. Clay: I would like to offer these three exhibits.

* * * * * * *

[fol. 1035] T. A. Hamilton testified further as follows:

Direct examination (Continued).

By Mr. Clay:

Q. You were just starting to comment on Exhibit No. 132, 133 and 134?

A. Yes, sir.

The first of the three exhibits, that is 132, shows the miles of the various segments, weights of rail in the main track, in the second main track, on various sections of the Denver and Rio Grande Western between Denver and Ogden. The track between Denver and Pueblo is paired with the Atchison, Topeka and Santa Fe for operations, a total of 102.9 miles.

The rail and ballast characteristics, which are also included in the Exhibit, describe the Denver-Pueblo mileage, those of the Denver and Rio Grande Western track in paired arrangement.

The same exhibit compares the rail and ballast character- [fol. 1036] istics for the Denver and Salt Lake Lines, the Moffat Line, between Denver and Orestod, the part over which the Denver and Rio Grande Western now operates under trackage rights.

There is a similar description for the line between Orestod and Dotsero of the Denver and Salt Lake Western, which we have been terming the Cut-off. The main line of the Denver and Rio Grande Western between Denver and Dotsero is in pretty good shape. There have been substantial rail renewals, tie renewals, bridge renewals and strengthening and a pretty good ballast job. In nothing that I am going to say about these physical characteristics of the two routes do I mean to imply that the track over Tennessee Pass, that is the line from Denver to Dotsero via that route, is not a good railroad; it is very good railroad. And the data in this rail and ballast chart indicates that. Rail and ballast, I should have said table, instead of chart.

However, the line from Denver to Orestod, the Denver and Salt Lake, is or will be within a few months a practically new railroad. It is being laid now with 100 pound rail complete throughout, and that job will be finished, we are told by the engineering forces, sometime in July of this year.

[fol. 1037] Along with that rail laying job is a complete necessary tie renewal and a job of ballasting, principally with volcanic cinders, which will make a first class railroad out of it.

The ballast job is complete now, with the exception of eleven miles, which will have to be done gradually because of having to dig down in the tunnels to maintain overhead clearances and because of some necessary work to be done

on the track approaching the tunnels in the same connection.

During the current year that job should be completed, so that the Denver or rather Utah Junction—Orestod line will be a first class railroad in another month, or two or three at the outside.

We have discussed, or I have described, rather, the gradient and curvature characteristics of the line and the only two sixteen degree curves, which have somewhat obscured the proper viewpoint of the rail alignment on the road are now disappearing, one is being taken out currently and the other is programmed for the near future.

As to the tunnels on the line, which Exhibit 133 describes, there are 39 tunnels on the line between Utah Junction and Orestod, of a total length of 18,020.0 linear feet, of which 8,102.0 feet are timber lined and 9,918.0 are unlined rock [fol. 1038] bore. These figures do not include the Moffat Tunnel.

It is a fact that the timber lining in the tunnels between Utah Junction, and Orestod, excluding the Moffat Tunnel, which is not timber lined, are not in very good shape. Some relining is under way now, and a practically complete job is programmed for the next two or three years.

Even if the linings are replaced entirely with concrete, the total cost would not exceed $120,000 for the entire job.

The Moffat Tunnel of a total length of 32,798 feet, is concrete lined for 18,231 feet and Gunnite lined for 14,567 feet, with a good state of maintenance as to lining.

Trackage conditions in the tunnel are good with one exception. A deposit of soot and cinders on the western side of the apex of the tunnel has made lining and surfacing conditions difficult. This material is mixed with the ballast so that the track put up apparently solidly today is down again tomorrow or within two or three days.

The work of removing this material, this debris, if you want to call it that, from the tunnel, is programmed for the next 30 days and with the better ventilation that now obtains, better than in the past, it is believed that this trouble will not recur. With that exception and the retirement of the timbers of the tunnels at a cost of about $120,000, maxi- [fol. 1039] mum, there is no deferred maintenance or future maintenance in sight as far as tunnels are concerned.

As to the Denver and Salt Lake Western, the cut-off, of course this is a brand new railroad, opened for operation

June 14, 1935. It is laid practically throughout with relay 90 pound rail, and the remainder with new 90 pound rail.

The rail is in present good condition. There is no reason why it should not serve satisfactorily for a good many years to come under the present, or even a substantially increased traffic volume. 90 pound rail is somewhat outmoded these days, but there are still in the west a good many thousands of miles of 90 pound rail, of which I have had recent personal opportunity to inspect in heavy traffic trunk lines that still has a good deal of life in it. I am thinking particularly of the Chicago, Milwaukee, St. Paul & Pacific on the west end and some of the principal secondary main lines and part of the primary main lines of the Great Northern.

The construction of the Denver & Salt Lake Western, or the cut-off, is an excellent job of work. Its very good alignment was secured in a very difficult territory, much of it by substantially changing the channel of the Colorado River. The road is built with native rock, all of the em- [fol. 1040] bankments, or practially all, are made of rock, are wide, amply sloped and just about as durable as that class of work can be.

The material in the railroad, with the exception of the relay 90 pound rail, is all new. It has been seasoned pretty well under traffic since it was opened for operation in 1935 and is today in good condition.

It does not present any maintenance problems.

The tunnels on this line consist of two, with a total of 1762 linear feet concrete lined, and at present in good condition.

I neglected to speak of the tunnel condition of the line between Denver and Dotsero, via Pueblo. There are no tunnels between Denver and Pueblo. Between Pueblo and Dotsero there are 2577.0 feet of timber lined tunnels, 585.5 feet of concrete lined and 991.0 feet of unlined rock bore.

Examiner Boyden: Mr. Hamilton, all that material is in the exhibit?

The Witness: Yes, sir.

Examiner Boyden: Mr. Clay, why, if it is in the exhibit, unless there is some particular thing to which attention is to be called, why go into the detail in oral testimony?

Mr. Clay: Could you leave out some of the detail, Mr. [fol. 1041] Hamilton?

A. Yes, sir.

Q. Confine yourself to a comparison of the two roads.

A. The condition of the tunnels between Pueblo and Dotsero is good, with the exception of one, Tennessee Pass, the repair of which is now under way.

As to bridging, Exhibit 134 shows the linear feet of bridging, wooden, steel, concrete, or masonry, in two separate groups.

The bridging on the line from Denver to Dotsero via Pueblo is in good condition. Large proportion of it, the major proportion is of steel, masonry or concrete, or combination.

On the line between Denver and Orestod the major proportion of the bridging is wooden. There is at the present in for some renewals, a program has been made and is now being put into effect which requires the expenditure in the next three years to rebuild or repair the bridges between Dotsero and Denver and keep them safe for the motive power now operated over them, and that includes the Denver & Rio Grande Western power now used on that mileage. That expenditure will run about $30,920 in order to permit the Denver & Rio Grande Western currently to operate its very heaviest freight power, an additional expenditure of $10,400 will be necessary. And about three [fol. 1042] years hence, in a complete rebuilding program to bring all the bridging up to that standard and bring maintenance up to date, an additional expenditure of $27,300 will be necessary to rebuild outright some of the bridges, so that the money necessary to spend upon the Salt Lake Line between Denver and Orestod spread over the next three years to put the bridge condition in good shape is approximately $68,000.

By Mr. Clay:

Q. Mr. Hamilton, based on the exhibits before you, will the cut-off Moffat route be more costly to maintain in the future than the Tennessee Pass route?

A. No, sir, not in my opinion. I have just described its almost complete tie renewal, ties with 100-pound rail throughout. I am speaking now of the line between Orestod and Denver, the finishing of the ballast job, and a modest

expenditure of approximately $188,000 total for tunnel relining and bridge rebuilding, and when that is done the burden of maintenance will be very much lighter in the future. That speaks of the line between Denver and Orestod.

The line north of Orestod and——

Q. Well, just a moment. Have you any comment on the cross tie conditions of the Cutoff-Moffat route?

A. Yes, sir, the Cutoff line of the Denver & Salt Lake Western is a new railroad, the ties are three or four years [fol. 1043] old, and in good shape and adequate for the traffic. The tie renewals on the line between Orestod and Denver are being made thoroughly in connection with the laying of the new rail and the application of new ballast, and when that work has been completed, which will be sometime this year, tie repairs or maintenance of ties, such as there are, will largely disappear.

Q. At the end of the current year the charge will be very substantially diminished?

A. Yes, sir, very substantially, 50 per cent or more.

Q. What is your next exhibit?

A. An exhibit showing the profile of the line of the Denver & Salt Lake Railway between Orestod and Craig, the section of the line which is not operated over by the Denver & Rio Grande Western.

Mr. Clay: I would like to offer this exhibit for the record.

Examiner Boyden: Mark it Exhibit No. 162.

(Exhibit No. 162, Witness Hamilton, marked for identification.)

The Witness: In connection with that I have another exhibit, two sheets, entitled, "Physical Characteristics and Condition, May 1937", Orestod to Craig, Colorado.

Mr. Clay: I would like to offer that.

Examiner Boyden: Mark that 163.

[fol. 1044] (Exhibit No. 163, Witness Hamilton, marked for identification.)

Mr. Clay: Off the record.

(Discussion off the record.)

The Witness: As to Exhibit No. 163——

By Mr. Craig:

Q. Both of these exhibits pertain to the line from Orestod to Craig?

A. Yes, sir.

Exhibit No. 163, coupled with the profile, Exhibit No. 162, pretty thoroughly describe the line at its present physical condition.

Exhibit No. 163 is narrative in form and I think will speak for itself without any comment from me, except that it is the result of direct, first-hand observation.

I might say that the line is in good shape for the traffic it now carries; some modest improvement program, described in the exhibit, is in sight for the next few years, but nothing that need run up the current maintenance costs very much.

Q. Is this line from Orestod to Craig in good physical condition?

A. Yes, sir, it is in good physical condition for its present traffic volume and present operating needs. As to a very substantial amount of the track, the newly published time card speed restrictions are 60 miles an hour [fol. 1045] for passenger and 40 miles an hour for freight.

It does not need any extraordinary maintenance to hold it in satisfactory condition for future business. There are certain rail renewals as the exhibit states, required over the next six or seven years, but consistent and wise budgeting will carry that along without running up present maintenance costs.

The tie condition has been improved this year and the ballasting condition is being improved. The maintenance on that line need not run above 1935-1936, very probably will run below in the next year or so.

Q. How would you characterize the ballast conditions?

A. Sir?

Q. How would you characterize the ballast conditions?

A. It is sufficiently well ballasted, Mr. Clay, the character and quantity of the ballast are good. And if you wanted to sum up the whole situation I might say in just these words:

The ballast character and quantity and condition are good, the tie conditions are fair, they are improving; they are putting in a lot of ties right now. Tie plate protection

is good. The bridges are adequate for the motive power necessary for the economical operation of the line.

Now they have some scant banks, they are filling them [fol. 1046] as they clean the cuts. It is well-drained railroad. The rail condition, west of Steamboat Springs, the rail is being rebuilt by welding battered ends. The 63 miles east of Steamboat Springs requires some replacements. Consistent patching will enable the laying of new rail to be spread over several years, however, and the work which is now going on will be sufficient for some years to come.

Q. That is, the condition of this line is entirely adequate for passenger service demands?

A. It is.

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[fol. 1047] (Exhibit No. 209, Witness Paynter, received in evidence.)

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(Exhibit No. 210, Witness Paynter, received in evidence.)

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[fol. 1048] Examiner Boyden: Mr. Anderson, I stated this morning that the printed record of the court proceeding is complete in the Commission's docket up April 21, 1937, and it is understood that the printed record will be kept up to date. It is running about a month behind.

Mr. Anderson: Will that be considered as in the record for the purposes of this case?

Examiner Boyden: The Stipulation of counsel was that copies of papers sent to the Commission and filed in the docket constituted a part of the record before the Commission.

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[fol. 1049] MOTION TO STRIKE

Mr. Nicodemus: Mr. Examiner, may I have the right of way for a moment?

The R. & I. Trustee has circulated certain exhibits that are about to be introduced through this witness. One of them involves a document compiled under order of Division

4 in this proceeding in respect of which we wish to make a motion. I think perhaps it would be appropriate to make that motion now. The Debtor moves to strike from the files three documents: First, document entitled or denominated "Accounting investigation, Denver & Rio Grande Western Railroad Company" filed herein on or about July 29, 1936.

A corresponding study relating to the Denver & Salt Lake Railway Company admitted or filed herein on or about December 22, 1936.

Third, a report of the Bureau of Valuation filed under order of the Interstate Commerce Commission, or Division 4, entered on March 8, 1937.

These three documents were filed by order of the Commission, under Section 77-C(11) and the Debtor objects to the filing of these documents and moves to strike them from the record of this proceeding, on the ground that no hearing with the attendant right of cross-examination, or no [fol. 1050] notice of hearing has been had and that the data embodied in these several documents is not such as the Commission is authorized to file in this proceeding under Sub-section C, paragraph 11 of Section 77.

I make that motion at this time because we wish to object to the admission of certain of these impending exhibits on the ground that they are based on those studies.

Examiner Boyden: I understand that the witnesses of the Bureau of Valuation are available to the Debtor to examine in connection with any matters relating to the valuation report, and that witnesses will be presented, upon request, to testify relating to the accounting report.

You understand that, do you not?

Mr. Nicodemus: I did not understand it, but many of these studies have been filed after the proceedings were closed, not in this case, but in other cases.

Examiner Boyden: This proceeding is still going on. If you desire to call any witnesses, now is the time for you to do it, Mr. Nicodemus.

Mr. Anderson: Your Honor please, I have been somewhat embarrassed by these reports being filed in the record without any witness to testify as to the same, as to [fol. 1051] some of the provisions thereof, which I do not think would be admissible in any event, except in proceedings before this Commission, because the hearings here are less formal and they are in the nature of administrative

hearings, but when this record is certified to the court, our position becomes somewhat more difficult and if it went up on appeal from the court's decision, the question of this evidence might become quite vital.

I had not understood up to this time that we would be permitted to call the representatives of the Bureau of Accounts and the Bureau of Valuation as witnesses on these statements which have been filed by the Commission.

Examiner Boyden: Why shouldn't you?

Mr. Anderson: And I am not prepared this afternoon to examine those witnesses. I think I would like to reserve the right, if it is necessary, because I would like to go over those accounting questions and see if they affect our situation and if they are vital we would have to ask leave to cross-examine.

I do not know that they do. I do not want to prolong this proceeding nor do I want to take unnecessary steps and if it was only before this Commission, I would raise no question.

I would like to reserve consideration of that question, in view of the presiding Examiner's statement.

[fol. 1052] Examiner Boyden: Will you advise us as early as possible what you desire to do?

Mr. Anderson: I will take that up as soon as possible after this hearing is closed and advise you.

Examiner Boyden: Do you press your motion, Mr. Nicodemus?

Mr. Nicodemus: I submit the motion. I do not ask for a decision on it now; and I did not expect to get it, but I want to make a complete reservation of the right of cross-examining the witnesses of the Bureau of Valuation, or of the Bureau of Accounts, and to offer evidence in rebuttal.

Examiner Boyden: Of course, under the terms of the Act, those reports are prima facie evidence of the facts stated. There have been no witnesses presented for cross-examination, but if you desire to rebut the facts shown in there, the members of the Commission's staff who prepared those are available at your call to testify with respect thereto.

Mr. Nicodemus: One of the difficulties that we are laboring under is that it is difficult to separate the facts from the theories and the conclusions. We do not know what we are bound by.

Examiner Boyden: It would seem that that would be a matter that could be developed on examination of the witnesses.

. . . . . .

[fol. 1053] WITNESS JOSEPH R. WARNER

Q. Turning now to the investment base upon which to determine the rate of return, what do you find in the figures submitted by the Debtor?

A. I find that, except for the deduction of accrued depreciation on equipment, as shown on the carriers' books, it was based on the combined total of the investment in road, equipment and general expenditures, aggregating $210,539,779, less accrued depreciation on equipment, $8,955,785, or a net base of $201,583,994.

The figures I have cited are those as of December 31, [fol. 1054] 1934 balance sheet, or the middle of the test period.

Except for the amount of accrued depreciation, the results would not have been materially different from the corresponding figures at the beginning and end of the test period.

Q. Are these figures not correct?

A. They appear to check with those in the December 31, 1934 balance sheet included in the annual report to stockholders for that year.

Q. What is wrong with them?

A. The fact that although the Debtor used a realistic figure of depreciated book value in computing the 2 per cent rate of return on equipment, when undertaking to determine the rate of return on investment in road and equipment it adopted the artificial book values of the Debtor's balance sheet which are not realistic.

Q. Will you explain what you mean by realistic figures and artificial book values as you have used the term?

A. I mean that the depreciated book cost of equipment is usually more than a mere book figure, because in the first place it almost invariably initially represented the actual dollar cost of the equipment purchased, decreased by subsequent depreciation accruals.

Except possibly in the case of very old equipment, it follows strict accounting principles laid down by the Com-

[fol. 1055] mission, even though the carriers were allowed considerable latitude in the rate of depreciation applied. The substantial soundness of these depreciated book cost figures as a whole for equipment in the case of the Denver situation is evidenced by the fact that they tally closely with the reproduction new less depreciation figures filed in the record by the Bureau of Valuation.

Q. Is not this also true with respect to the book cost of road and equipment?

A. No, it is not, and the first prerequisite for determining the relative rate of return on different blocks of property is that the investment base or valuation be comparable.

This distinctly is not the case as regards the depreciated book cost of equipment used by the Debtor in computing the credits to the liens on equipment on the one hand, and the investment in road and equipment as a whole used by the Debtor for the purpose of demonstrating the low earning power of the property as a whole on the other.

Q. What would be comparable figures?

A. If we are going to use depreciated book cost figures for equipment which are substantially the same as the reproduction new less depreciation values compiled by the Bureau of Valuation, then we should use similar figures [fol. 1056] to determine the rate of earnings on the total investment in road and equipment.

Q. Where would you obtain these figures?

A. From the Bureau of Valuation's report to which reference has heretofore been made.

Q. Will you please do this?

Mr. Nicodemus: That is received subject to our motion to strike, which relates to that underlying data?

Examiner Boyden: Yes.

Mark the statement exhibit 246.

(Exhibit No. 246, Witness Warner, was marked for identification.)

Mr. Gammell: I submit that exhibit in the record formally.

Examiner Boyden: Any objection?

(No response.)

Received.

(Exhibit No. 246, Witness Warner, was received in evidence.)

A. The reproduction new less depreciation of road and equipment of the Denver & Rio Grande Western itself is given on page 3, sheet 1 of the Bureau of Valuation's report as $115,467,756, to which should be added for lands and rights, $5,428,159, or a total of $120,895,915, which is [fol. 1057] the item which appears in column 13 of the exhibit I have just submitted.

At the top of that column.

Similarly, the reproduction new less depreciation of the Denver & Salt Lake Western is cited at $3,880,723, plus $7,219 for lands and rights, which gives a total of $3,887,942, which appears in the second line of column 13 of the exhibit.

The comparable figures for the Junction are $3,409,074, plus $60,330 for lands and rights, or a total of $3,469,404.

The comparable figures for the Goshen Valley are $270,756 and $1908.

In each instance I have included non-carrier lands.

The grand aggregate of all these is $128,525,925. This figure is $73,058,069, or 36.2 per cent less than the Debtor's book cost figure of $201,583,994 for the Denver & Rio Grande Western alone.

In other words, the Debtor, for the purpose of demonstrating the low earning power of the property as a whole used an investment base which is more than 50 per cent higher than the reproduction new less depreciation plus land figures of the Bureau of Valuation, notwithstanding that the figures I have cited include the investment in both [fol. 1058] the Junction and the D. & S. L. properties which the Debtor's book costs does not.

It is apparent, therefore, that even if there be added to the Bureau of Valuation's figures, working capital which is stated at $2,473,400, an allowance for going concern and other elements of value, there would still be a very wide gulf between the inflated book values used by the Debtor for determining rate of return on investment and the more representative figures of the Bureau of Valuation.

Q. What was the relationship of the earnings from railway property which you have heretofore constructed from exhibits——

A. I might interrupt, if I may, to bring in something that is not in this exhibit.

Q. Very well.

A. In this exhibit, following down column 13, I have added in the $2,473,400 working capital. The Bureau of Valuation report arrives at a figure of $113,520,547.

There is not included in here the other elements of value which some might contend should properly be included in a computation of this kind. Ordinarily I would concede that to be unquestionably so. I am not sure that it is proper in this case, but if there be a difference of opinion on that, and there is latitude for such difference of opinion, I have ar- [fol. 1059] bitrarily added a figure of $5,895,805, at the bottom of column 13, and that is added in lieu of the cash working capital and gives a total of $116,942,959.

Now, that $5,895,803 is an arbitrary figure, but it is not picked out of thin air. It represents the excess in the Commission's valuation of the D. & R. G. W. properties as of June 30, 1919 and represents a difference in the D. & R. G. property between the values, between the Commission's finding of final value of $104,457,348 of the total owned property, including Junction, Kenilworth and helper railroads as of that date, and the $98,561,545 which is found as reproduction new less depreciation value, plus land as of that date.

Q. I was going to mention next the question of the relationship of the earnings from railway property which you have heretofore constructed from exhibits 107 and 113 to the aggregate of the Bureau's reproduction new less depreciation cost for the underlying properties.

A. A ratio of $2,713,082 to $128,525,925 would give a return of 2.11 per cent, or if you add the $2,473,400 of working capital, a return of 2.07 per cent.

Q. Are there any other factors you have in mind?

A. Yes; the very important one that we have two kinds of equipment and two kinds of railroad properties in this Denver situation. One is standard gauge and the other is [fol. 1060] narrow gauge and there is a wide difference between them, particularly as regards equipment. The Debtor itself indicated this when it cited on page 13 of exhibit 69 that there was no general market in which reproduction value could be quickly realized for narrow gauge equipment.

If the earning power of the railroad property as a whole is any criterion of a proper rate of earnings on equipment, we must obviously distinguish between the two entirely different kinds of railroad property and equipment and not confuse the results by commingling them.

Q. What adjustment do you suggest here?

A. A breakdown of both road and equipment values as between standard and narrow gauge.

Q. Can you do this?

A. I believe so, from the material at hand.

Q. Go ahead, please.

A. Take the figure of $2,713,082 as the earnings for the test period which consists of the net railway operating income, plus the potato adjustment, plus the ninety odd thousand dollars of net rents which it would appear were derived from property included in the investment base, and eliminate therefrom the narrow gauge results included therein.

[fol. 1061] As a matter of fact, the results of the operation of the standard gauge lines alone can be obtained from exhibit 70, 107 and 113. Taking the last mentioned, the earnings of the standard gauge lines can readily be constructed by adding the potato adjustment to the net railway operating income, which gives an adjusted net railway operating income of $3,328,307.

If we add to this the net of miscellaneous rents and the rents for leased roads, we obtain a figure of $3,402,233, as the earnings of the standard gauge lines in the test period, as shown by exhibit 103.

This figure, like the previous one constructed for the system as a whole does not include the outside income such as interest from the holdings of Salt Lake bonds, dividend adjustment on Utah Fuel Stock, etc.

I only mention that because the Debtor did include some of those things, but I want to make clear that I am not including the same outside items.

Q. How about the investment base?

A. As a rehearsal of the combination of these figures might be a little tedious, I have prepared herewith a schedule which I submit as exhibit 246, which shows the construction of the investment base; the computation of the narrow gauge valuation is shown in the bottom of this schedule, 246, which, deducted from the $128,525,925 gives a value

[fol. 1062] of $114,047,147. If we add the working capital to that it gives us $113,520,547, and with the adjustment for other elements of value in lieu of working capital would give a figure of $116,942,950.

Q. Had you finished with your explanatory part?

A. Yes.

Q. Did you want to say anything about the rate of return?

A. The relationship between the $3,266,892, which is income from railway operations shown in this exhibit 246 for standard gauge lines only, to the investment base in standard gauge lines, gives a relationship of 2.94 per cent. That is the relationship of the income from the standard gauge lines to the reproduction new less depreciation element of value assigned to those lines, exclusive of so-called other elements of value, but including the land.

Mr. Hoffman: And including equipment.

By Mr. Gammell:

Q. The investment figures from which you construct this——

Mr. Hoffman: But including the depreciated value of equipment, Mr. Warner?

A. How?

Mr. Hoffman: But including in that figure the depreciated value of equipment?

[fol. 1063] A. Yes, the depreciated value of equipment is in it, these figures embrace both the property and the equipment, reproduction new less depreciation.

Examiner Boyden: All right.

By Mr. Gammell:

Q. The investment figures from which you construct this 2.94 per cent are merely the sum of the elements of value for the standard gauge lines as found by the Bureau of Valuation as of December 31, 1935, and do not embrace the going concern and other values, if any, which might attach to the property.

A. Well, I have substantially covered that before in the discussion, because I put in a computation of this kind. The other elements of value are properly includable, but

as there is latitude for diversity of opinion on that score, I have shown those figures here, if one wants to include them, they make very little difference, however, if this point be waived and the elements of value be stepped up by the amount which the Commission's finding of final values for the Denver & Rio Grande Western properties exceeded its then reproduction less depreciation values, or $5,895,893, would bring the total investment base up to $116,942,950, to which the income of $3,266,892 would bear a relation of 2.79.

I am not, however, conceding that if a return on equipment is to be any way influenced by the return on the prop- [fol. 1064] erty as a whole, the value of the latter adopted for such purpose should be more than the comparable figure for equipment, that is, bare elements of value, or specifically, in this instance, reproduction new less depreciation. And as this exhibit shows, the return on reproduction less depreciation was 2.94.

[fol. 1065] E. H. Burdick was sworn and testified as follows:

Direct examination.

By Mr. Fitzgibbon:

Q. Mr. Burdick, you have been retained by the Guaranty [fol. 1066] Trust Company of New York in this matter?

A. I have.

Q. What were you asked to do?

A. I was asked to value the stock, the common stock of the Utah Fuel Company on a going concern basis.

Q. What was your engineering education, Mr. Burdick?

A. I spent three years at the Colorado School of Mines, not finishing the course for financial reasons at that time.

At several times afterwards and during the last fifteen or eighteen years I have done advance work at the University of Utah, specializing in geology, and during those times of attendance lecturing in the economic geology class on coals.

Q. What has been your professional experience in the industry?

A. From 1904 to 1906 I was chief engineer of the Great Western Fuel Company operating in Fremont County, Colorado. From 1906 to 1917 I was in independent practice, with my office at Durango, Colorado.

During this period of practice at Durango I had occasion to examine many coal mines and properties. During that time I examined and valued properties, undeveloped properties largely, owned by the Union Pacific Railroad through [fol. 1067] their subsidiary company, the Porter Fuel Company.

Q. Have you had any connection with the Utah Fuel Company and its affiliate?

A. Yes, sir. During the entire period from 1906 to 1917 I was retained at various times to do work for the Calument Fuel Company, a subsidiary of the Utah Fuel Company. In 1917 I had my first salaried connection with the Utah Fuel Company. My duties were as technical advisor, mining engineer, for the operations, particularly in Colorado.

In 1919 I was transferred to the general offices in Salt Lake City and still carrying no specific official title. My duties were as assistant to the president and in technical charge of the operations of the company in Colorado.

This connection lasted until 1922, since which date I have been in independent practice in Salt Lake City, specializing in fuels.

During the time in Salt Lake City from 1923 to date I have been the Geologist for the State Land Department, having charge of the leasing of mineral lands, and for a five-year period, from 1927 to 1932, I was consulting geologist for the Tax Commission of Utah, valuing the non-metallic minerals and particularly coal mines for the purpose of taxation.

[fol. 1068] I might explain here that the tax structure in Utah on coal mines is more or less an exact structure. The recoverable reserves in each given tract are calculated after rather close examination and certain values assigned according to rule.

Since 1933 I have been acting State Geologist for the state.

Q. And in connection with that have you valued for sale purposes other mining properties?

A. In connection with my private practice, yes, sir. I might state that the state of Utah is simply a client of

mine, not a salaried connection. During that period I valued for sale purposes mines aggregating probably 30 or 35 per cent of the coal tonnage produced in Utah.

Q. Will you give a brief statement of the geological situation in Utah and Colorado?

A. The coals of the Rocky Mountain field, including those in Colorado and Utah, occur in the lower parts of the upper portion of the cretaceous horizon. I speak of this particularly to distinguish them from the coals of the Appalachian region, which are in the Pennsylvania main, which are very much lower.

This fact has a considerable bearing on the operations of the various coal mines. The coal beds are relatively flat lying, and therefore are opened by tunnels from the [fol. 1069] outcrop. There is only one operating shaft mine in the state of Utah.

Mr. Fitzgibbon: There is nothing in the report in regard to this; I do not know how far the Examiners wish to go in connection with it.

Examiner Boyden: Well, only as far as is necessary to support your report.

Mr. Fitzgibbon: Well, it is sufficient for my purposes.

The Witness: I might state here that in discussing the values of the Utah Fuel I am considering the Consolidated Fuels and the acreages of the Utah Fuel and the present Valley Coal Company.

They used to be distinct companies although the same general operation, but a few years ago the charter of the present Valley Coal Company expired by limitation and the Utah Fuel holds all the properties of the present Valley Coal Company, so as far as this report is concerned the values are based on the original Utah Fuel, plus the present Valley Coal Company and the Calumet Fuel Company and various other smaller subsidiary companies.

By Mr. Fitzgibbon:

Q. Since 1922, have you from time to time been retained by the Utah Fuel Company for their particular problems? [fol. 1070] A. I have.

Q. Have you recently made an examination of those properties?

A. Yes, sir, I made a rather detailed examination of the coal properties in Colorado. I have been very familiar

with the operations in Utah, my connection with the Utah Tax Commission requiring that I go through these properties at least once a year.

Q. Where have you gotten all of the statistical information included in this report?

A. As far as the sheets that refer to accounting, they are obtained from the auditing department of the Utah Fuel Company and were furnished at my request in order that I might gain sufficient basic data on which to fix my valuations.

Q. Have you examined or had submitted to you various exhibits which have been offered in this case with relation to the Utah Fuel Company?

A. I have.

Q. Do you know that it was not many years ago when the equity in this stock, half of it, was valued at many millions of dollars?

A. That is my information, yes, sir.

Q. You know that these bound sheets carry the properties so far as the stock is concerned at from ten to fifteen [fol. 1071] million dollars?

A. I do.

Q. How is it then that you reach in this report a valuation of slightly less than five million dollars?

A. In order to answer that question one would have to outline the history of the coal industry in Utah so far as it affects the Utah Fuel Company.

Or possibly it would be more properly stated to say an examination of the history of the Utah Fuel Company in two sections:

First, from the time of its formation up to 1921, and the changes that have occurred from 1921 down to the present date.

The explanation of the first part of their history has a direct connection with the geology of coal mines in Utah. As I said before, the coal beds are flat lying, but instead of being one seam there are a series placed in parallel position, one above the other.

Prior to 1908 the only mines, railroad mines, operating in Utah were the property which is known now as the Sunnyside Mine, the Castle Gate Mine, Winter Quarters Mine and the Creek Mine. The general conception was that

there was simply one coal bed throughout this field, known as the Castle Gate coal bed.

About 1908 it was discovered that there were beds above, [fol. 1072] and commencing about 1913 there began a period of intense development of these coal seams. Up until that time the Utah Fuel Company enjoyed a practical monopoly on the coal business in Utah. From 1912 to around 1920 or 1921 there were some sixteen large coal mines, or fairly large coal mines opened.

This, of course, made severe competition, particularly so as the market for Utah coal is a very restricted market.

Q. Where is it principally sold?

A. The state of Utah, Idaho, to a limited extent Nevada; in the early days California was a very fine market. Oil was discovered in large quantities and became a serious competing factor after 1921. Up to 1921 the largest mine by long odds that the Utah Fuel Company owned was the Sunnyside mine, and in connection with this mine there were some 800 small beehive coke ovens operated. This was a very profitable business.

The Somerset Mine, in western Colorado, one of the properties of the Utah Fuel Company, was operating at maximum capacity. So that by 1921 we had the Somerset Mine, the Sunnyside Mine, Castle Gate No. 4 Mine, and a second mine at Castle Gate which was opened prior to 1921, known as Castle Gate No. 2 Mine; the Winter Quarters Mine, a mine producing at that time some 400,000 tons a year or better, and the Clear Creek Mine.

[fol. 1073] All of these properties were operating at practically maximum capacity as of 1921.

Now, taking up the period from 1921 to the present date. The first explosion at Castle Gate No. 2 Mine occurred. This was in March 1924, a very disastrous explosion which wrecked the mine very badly and there was a terrific loss of life. In August 1928, the second explosion occurred and while there was no loss of life the property damage was very large.

The main standby of the company at Castle Gate was the Castle Gate No. 1 Mine which had a superior grade of coal; and in November 1929 this mine caught fire and was sealed and so remains to the present day.

In 1928 the Winter Quarters Mine was abandoned, the town dismantled, buildings sold, and today it is rather

difficult to tell where the Winter Quarters Mine was located.

I neglected to state, in the period prior to 1921 another small mine, known as the Utah Mine—it was not of great importance, its maximum production reaching possibly 50,000 tons a year. In 1925 the Utah Mine was abandoned, the buildings removed, the portal of the mine is now caved in.

The most serious loss subsequent to 1921 was the loss of the coke trade at Sunnyside. I might state that the [fol. 1074] Sunnyside Mine and a few thousand acres adjoining it on the South constitute the only coking coal in the state of Utah.

The Columbia Steel Company had come into the state and had built some iron furnaces at Ironton, near Provo, and acquired the ground south of Sunnyside.

They constructed by-product coke ovens, and thereby were able to underbid the Utah Fuel in their coke business. As a consequence the Utah Fuel lost this business, the Sunnyside Mine which had previously produced from, say, 400,000 tons, and in one year I believe as high as 800,000 tons, was largely closed down and a share of the houses sold, and today this mine is producing only about 50,000 tons.

The product cannot compete in the somestic market on account of its being a heavy coker.

Q. A heavy what?

A. A heavy coker.

Examiner Boyden: What do you mean by "heavy coker"?

The Witness: Well, the coals of Utah are non-coking. That is, when they burn they burn simply to an ash. You cannot make metallurgical coke except at the Sunnyside Mine and the Columbia Mine, the products of those two coals.

You use either of those coals in a stove and it simply [fol. 1075] cokes into a hard mass.

Now, during this period the Utah Fuel——

Examiner Boyden: Excuse me just a minute, now. Does that make that coal advantageous or disadvantageous for ordinary fuel consumption?

The Witness: Disadvantageous.

Examiner Boyden: Does it make it advantageous for coking purposes?

The Witness: Oh, yes, it makes a very fine metallurgical coke, that is used in the smelters and the blast furnaces at Ironton.

Examiner Boyden: That is the Sunnyside Coal you are talking about?

The Witness: That is the Sunnyside Coal, and when they lost their coke contract they could no longer operate the Sunnyside Mine, that is, to operate it to anywhere near capacity.

By Examiner Boyden:

Q. That is, they were unable to compete with the new producer in spite of the fact that they produced a good coking coal?

A. Yes, sir; the Columbia has the same coal, it practically adjoins Sunnyside.

By Mr. Fitzgibbon:

Q. Are there any particular operating advantages that one mine has against the other?

A. No, as a matter of fact I think probably the Columbia [fol. 1076] has the advantage. If you wish me to state the reason, I can.

Mr. Fitzgibbon: Well, I think we can take his conclusion.

Examiner Boyden: Very well.

The Witness: During this period the company opened one mine, it is a small shaft mine, located at Castle Gate, and is known as the Castle Gate No. 3 Mine. This mine operates a coal bed probably 250 feet vertically above the Castle Gate seam. The coal is all right for domestic purposes, but cannot be sold for stoker purposes because the fusion point of the ash is too low.

So when we come to the present date, the only mines of the Utah Fuel operating are the Somerset Mine in Colorado, which is a good mine.

Q. What about the quality of the coal?

A. That is a very good quality of coal. It is non-coking; it won't make metallurgical coke but it is a very nice quality of coal as western coals go. The Sunnyside Mine is operating at around 10 per cent of maximum capacity; the Castle Gate Mine and the Castle Gate No. 3 Mine at Castle Gate, and the Clear Creek Mine operate at 50 or 60 per cent of capacity. The reason for, the main reason for the re-

stricted capacity at the Clear Creek Mine is that the ground [fol. 1077] is nearing exhaustion and the workings are thin and in other words filled with broken stone, destroying the value of the coal very largely in thos- broken stones.

This coal is really only good for domestic purposes, as it will not keep while in storage, it has too high a moisture crystallization, it breaks down badly on exposure to the air.

Q. What is the proper amount of air in that field to maintain the keeping qualities of the coal?

A. I have given the analysis in here. A 3 per cent moisture crystallization coal, as far as Utah is concerned, is a very good coal. As soon as you get above 5 per cent moisture you can look for the coal to break down upon storage.

Another factor that might be mentioned in here is that all Utah coals fire on storage. This is particularly true of slag piles.

I neglected to state, regarding the Somerset Mine, which is located in the same coal horizon as the Castle Gate Mines, the workings go under terrific cover. I mean by "under terrific cover" that in following the down dip of the flat lying coal bed, that is, flat along its strike and dip, approximately 5 degrees away from its outcrop you get increasingly deeper into the ground.

In addition to that the mountain ranges rise from the [fol. 1078] outcrop. Under this heavy cover spontaneous fires commence to generate and the large Somerset seam, which was about 13 feet thick, had to be abandoned, and operations transferred to a coal bed 50 feet higher, which runs from 6 to 8 feet.

Examiner Boyden: When you say that the Utah coal fires in storage, you mean that it will take fire from spontaneous combustion?

The Witness: Yes, sir.

By Mr. Fitzgibbon:

Q. That is, while it is in the ground?

A. Well, in the case of Somerset, yes, but I think you were referring to after it is mined and piled up in the yards.

Examiner Boyden: Yes.

The Witness: It fires very readily when it is in storage, Mr. Examiner.

Stated briefly, the shrinkage in output and of potential output accounts for the differences between the high values of a few years ago, which quite possibly were entirely justified, and the valuation which I have placed upon this property in this report.

By Mr. Fitzgibbon:

Q. Have you any other remarks to make as to the quality of the coal now being mined, other than what is in your [fol. 1079] report, or do you think that that covers it sufficiently?

A. Well, I think that covers it sufficiently but I would be very glad to go further into that, if you care.

Examiner Boyden: I think it is sufficient, if it is sufficient to form a basis for your report; make your report understandable.

By Mr. Fitzgibbon:

Q. Are you familiar with current wages and costs of supplies in Utah and Colorado?

A. Yes sir, I am quite familiar with wages, and, in a general way, with the cost of supplies.

Q. And current coal prices?

A. Yes, sir. I might say here that in—I will explain what my summation will show by making some explanation regarding the Calument Fuel Company if you want me to do it at this time.

Mr. Fitzgibbon: Off the record.

(Discussion off the record.)

By Mr. Fitzgibbon:

Q. Oh, yes, if you would take up the Calument at this time, please.

A. The Calument Fuel Company has——

Q. This is on Colorado, now?

A. Yes, sir. On page 19 of the report the joint set-up of the Calument Fuel Company is stated, the physical set-up.

Commissioner Meyer: Are you going to offer the re- [fol. 1080] port?

Mr. Fitzgibbon: I am. Do you want me to offer it now?

Commissioner Meyer: Let's give it an index number or exhibit number. We will mark it Exhibit 253.

(Exhibit No. 253, Witness Burdick, received in evidence.)

The Witness: As of 1921, the Calumet Fuel Company was operating one mine in Colorado. And all of their operations have always been in Colorado. This was known as the Perins Peak Mine and was located some three or four miles northwest of Durango on a branch, which they owned, by the way, some two or three miles long, connecting with the narrow gauge Rio Grande Southern Railway.

The Perins Peak Mine is one of the mines that was completely worked out before anything happened to it. The Calumet Company—it was worked out in the middle, possibly about 1925 I believe the work there was abandoned. It is set forth in the report, the exact date.

In Huerfano County, Colorado, the Calumet Fuel Company owned a tract of coal ground, just north of Walsenburg comprising close to 4000 acres. There were three mines operating in this tract, under lease. What was known as the Turner Mine, the Gordon Mine and the Vesta Mine. The Calumet No. 1 Mine was on the larger coal bed. There [fol. 1081] are two seams of importance in that territory, the lower one known as the Cameron bed and the other one the Walsenburg bed.

The seams or coal beds, I am using those terms synonymously, are very much smaller in the Walsenburg district. The Cameron coal bed runs from 36 or 40 inches up to, in some cases, 5 feet, 5½ feet.

The Walsenburg bed is a larger seam, running generally 7 or 8 feet in this particular district.

The Utah Fuel Company, or the Calumet Fuel Company, took over the Turner Mine and operated it as a company operation until December 1933. The various mining troubles developed and in part of the territory the coal bed became much thinner and dirty, and they had to close the operation and transferred their activities to a mine adjoining on the south, within their land, which is now known as Calumet No. 2 Mine.

The Calumet No. 2 Mine is on the Cameron seam and produces a very nice grade of coal, particularly for domestic use. The original Turner Mine, or Calumet No. 1 Mine produced a coal that was considered not a very good keeper but was pretty fair for locomotive use, and they had a substantial railroad contract. The normal output of the Calumet No. 2 Mine at the present time is 75,000 or 80,000 tons

[fol. 1082] a year, and I believe will reach 100,000 tons or more a year for the period until the coal reserves are exhausted.

By Mr. Fitzgibbon:

Q. You refer in the report to the turning back of certain of these coal lands to the state in order to avoid taxes, not to avoid taxes, but to give back the land and therefore relieve the corporation of tax burdens, do you not?

A. Yes, sir.

Q. How long ago was that done?

A. It has been done in succeeding years, commencing about 1931 or 1932. Did you wish me to go into that?

Q. I want you to state your opinion as to whether or not that was done wisely or not, and state the basis of the advantage.

A. I think that it was very wisely done.

Q. And why do you say that?

A. In the first place, when these lands were acquired, Utah had such a taxing system that a very negligible burden was placed on an operating company on account of its bad reserves, that is, the coal that was not being operated. It was on this theory that the Utah Fuel Company acquired these lands. Commencing in 1917 the system of taxation was changed, as I have explained, it was based on the tons of coal in reserve.

The lands largely that were surrendered were backlying [fol. 1083] lands and if we think again of your geography of your mountain chains piling up back from the outcrop, they were nearly all under very heavy cover. That is, there was a terrific pressure on the coal. They were not "get-at-able" except from the outcrop, the shaft operation generally speaking would be way too deep. No one else could operate these lands and as a matter of fact using any reasonable forecast as to tonnage production the coal reserves would not be necessary for some hundred or hundred and fifty years, in fact, there is some of that backlying land that would have been longer than that.

The tax burden with the drop in tonnage was becoming prohibitive. The assessed taxes per ton of the Utah Fuel Company eventually amounted to some 26 or 27 cents for every ton *out* output, which really removed the chance of any profit, and hence these lands were surrendered.

Now, the taxing system on non-operated coal lands in Utah is based on substantially when you are going to get to them. They are called A lands, B, C, and so forth, the A lands being a subdivision in which are mine workings, and those are valued for taxation purposes at 4 cents per ton. The lands adjoining and within one mile of an operating mine are classed as B lands, and are given a value of 2½ [fol. 1084] cents per ton. The land adjoining the B lands are classed as C, and are given a value of ½ cent per ton.

Now, up to this point experience has proven that the tax structure in Utah results in a value that closely approximates the actual value.

Now, when you go into these lower classes, D, E, F, and so on, they impose a tax burden that is inordinate and if you add the value of those lands to the A, B, and C lands you have got a resultant value that is considerably more than the actual.

The abandonment of some of the lands was brought about by the fact that the operation which normally should develop those lands had been abandoned. This automatically reduced the assessed valuation to a lower class.

I might say that in assessed valuation of coal lands, they do not value the gross tonnage; they proceed on the theory that 60 per cent of the gross coal is mineable.

Examiner Boyden: Mineable?

The Witness: Mineable. That is, they can produce 60 per cent.

Experience is not bearing that out under the heavy cover lands, that is, those that have a heavy burden over the coal.

By Mr. Fitzgibbon:

Q. Am I correct in interpreting your testimony and re- [fol. 1085] port so as to mean that in the surrendering of those lands nothing was lost but something was gained?

A. I think there was a great deal gained.

Q. And the coal lands were really, insofar as the Utah Fuel Company was concerned, they were not given to someone else with the power to take the coal out?

A. No, sir.

Q. Is there anything you want to say before proceeding to the elements as to valuation?

A. I think not. I think that is covered, at least in the outline in the report.

Q. Well, what has been your approach to the valuing of the property?

A. I considered, insofar as the Utah Fuel is concerned, the earnings in the past, and have endeavored to forecast a reasonable earning in the future. This takes into consideration, of course, the general conditions, the loss of the coke business, and so forth.

I have also considered the income statements and the balance sheets of these other companies, and from all of this I have arrived at this conclusion; that an average of the new money earned in the period including 1929 to the present date is a fair average of what can be expected in the future life of the property under a certain set of conditions which we are taking as basic.

[fol. 1086] In the first place, in fixing a valuation we will have to consider the reasonable depreciation based on the new tonnage which we are calculating is going to be produced on an average in the next 40 year period.

The tonnage reserves I think can be passed with the statement that they are more than ample to supply a mine producing the tonnage I have estimated for the 40 year period. As a matter of fact, the reserves would be ample to supply this mine for probably a 70-year period.

Q. Why is it you base your calculations on a 40-year period?

A. Well, 40 years is about as far as I want to go in fixing a valuation.

From these reports, which are all included in the statement, the income statement, and so forth, in this report, the latter portion thereof, marked "addenda" I conclude that a fair new money expenditure would be 33.8 cents per ton; that a reasonable depletion allowance would be 12 cents a ton, and to return the value of it I have placed a depletion allowance of 3 cents a ton.

The next question is to determine what will the output be.

Q. Before you leave that, for a moment, why was it that you took the years 1929 to 1936?

[fol. 1087] A. The coke contract was lost prior to 1929 and in my judgment this coke business can never be regained. A large part of the earnings in an early day were from the Sunnyside operation and I have to delete from my basic data those periods in which the Sunnyside Mine was operating. Is that sufficient?

Q. Yes, that answers my question. Thank you.

A. The next question is to determine how many tons of coal are you going to produce. An examination of the history of the years taken as indicative for value, the Utah Fuel Company has produced in Utah about 20 per cent, which has been an increasing amount.

Q. Is that shown on page 24 of your report?

A. Yes, sir.

Q. In chart form?

A. Yes, sir, it is shown in chart form, and also the complete tabulation, including Somerset, appear at other points in the report.

Q. I did not mean to interrupt you.

A. That is perfectly all right.

Q. I just wanted to make it easier for people to follow.

A. Applying this figure of 20 per cent to the total Utah production, less the coking coal production, gives in my judgment an average expectancy during the next 40 years of 1,200,000 tons per year. In other words, the production [fol. 1088] of the State of Utah will increase sufficiently so that 20 per cent of this production will amount to 1,200,000 tons per year. To this total must be added a reasonable tonnage for the Somerset Mine which I have placed at 720,000 tons per year, making a total expectancy of production of the 40-year period of 56,800,000 tons which, at 14.7 cents per ton, indicates a net profit of $8,349,600, or a return of $208,740 per year.

Now, it must be borne in mind that this return is based on what the land will produce with the aid of the plant on the ground. So this resultant value which comes on the basis of ascribing a 6 per cent return on the money, a value of land and plant, present day value of land and plant, of $3,479,000.

From this must be subtracted the value of the improvements and equipment to give the value of the coal lands. This amount of equipment and improvements is depreciable, which will be later discussed, comes to $1,641,460, giving a value for the coal lands of $1,837,540. I have assumed more to give recognition to the residual land after this 40-year operation, an arbitrary figure of $50,000 which added gives a total value of the coal lands of the Utah Fuel Company of $1,887,540.

Q. Now, how did you value the Calumet Coal Land, by the same method?

[fol. 1089] A. No, sir. The operating history of the Calument No. 2 Mine is not of sufficient length to give a yardstick, as to earning capacity. I have assigned a lump value per ton of coal equal to the going royalty in that district, which is 10 cents per ton. And discounting that royalty to get present day value.

Multiplying this by the tons of recoverable coal will give the present day value of the coal lands.

In the case of the Calumet Fuel Company the non-recoverable tonnages have shrunk very materially as the workings went into the tract owned by the Calumet Company and as drill holes were sunk it was found that there was not nearly the amount of recoverable coal that was estimated in the first place. The recoverable coal reserves in the tract owned by the Calumet Fuel Company are now quite definitely placed at 2,000,000 tons. Assuming an annual mine production of 100,000 tons, would give a life of the mine of 20 years.

The present value of the 2,000,000 tons of coal on the 10-cent royalty basis, 20 years at 6 per cent, gives a total present value of coal lands of $114,698.

Now, in this case the value is for the lands alone. In other words you might say rental of these coal lands. To this should be added in this case the additional value of plant and equipment.

[fol. 1090] Q. Why should that be added, in the other case you deducted it, did you not?

A. Because that was based on the use of both land and plant. In this case on a royalty basis the value is based on the use of the land alone, therefore we should add the value of the plant.

Q. You mean that if they were leased at this royalty the lease would not include the equipment and other property that would be there?

A. No, sir, it is simply rent on the land, to state it in other terms.

Adding this value of plant and equipment, which amounts to $172,385, gives a total value of the Calumet Fuel Company of $287,043.

The sum of the Utah Fuel Company valuation proper and the Calumet Fuel Company would then be the value of the physical coal properties.

Q. Are you conclusions as to value set forth on page 33, that is, page 33 of Exhibit 253?

A. Yes, sir, they are.

But these conclusions of value are based on considerably more data than just for the two companies. In other words, there are certain subsidiary companies, other small companies, and the summation of value was based on the value of the physical property and the balance sheets of the small [fol. 1091] subsidiary companies. That is set forth in the consolidated statement of values on page 35, which is again repeated on page 34.

This in total shows a value for the Utah Fuel Company and its subsidiaries of $4,653,720.30 as tabulated.

Q. You mentioned page 35 a few seconds ago; you meant page 33?

A. It is set forth on page 33 and repeated on page 34.

Q. Have you tried to check this valuation against other methods?

A. I have.

Q. What has been—tell us what they are.

A. Since this report was submitted, in fact, since I came to Washington I endeavored to check my totals by other methods of valuation.

First, on a royalty basis, the same as in the case of the Calumet Fuel Company. In Utah the going royalty, both of government and state leases, is 10 cents a ton. Applying the factor of ultimate 10 cents a ton royalty to present day value at 6 per cent, and applying that to 56,800,000 tons, that gives a value for the coal lands of $2,186,476. To this should be added to make it comparable, the $50,000 residual value, making a total value of $2,236,476. To this should be added the same value for depreciables as I used in my origi- [fol. 1092] nal valuation, giving a value for the physical property and equipment of the Utah Fuel Company of $3,287,936, as compared to the $3,529,000 shown in my report.

Q. Now, those items, $3,529,000, are approximately the totals of items 1 to 4 on page 33?

A. Yes, sir.

A second check was the assessed value. And taking the assessed value of the Utah Coal Lands, which amounts to $1,603,605.

Colorado has no exact rule of valuing coal lands. The Somerset unit, that is, those lands in which the coal is tributary to the Somerset operation, is assessed at $80,000. I think this is unquestionably low. This gives a value of

For purposes of depreciation, the Internal Revenue Department years ago fixed a basic value for the Utah Fuel Company and the Calumet Fuel Company of $5,594,923.36, less the allowed depreciation to date amounting to $1,312,026.60, leaving a remaining value of $4,282,896.76, which would be comparable to the land and depreciables of the Utah and the Calumet Fuel Company, which appear in that report.

I might say in this connection that within the last two weeks, the department of Internal Revenue has okayed the depreciation figure for 1935 and 1936 on this basis of valuation.

By Mr. Fitzgibbon:

Q. About the administration of these properties, both executive and from the operating point of view, have you any views on that?

A. Yes, sir; I am well acquainted with the operation of the coal properties in Utah and production costs, and so forth.

[fol. 1095] Examiner Boyden: Suppose we postpone that until two o'clock.

Mr. Fitzgibbon: Very well.

Examiner Boyden: We will recess until two o'clock.

(Whereupon, at 12:30 o'clock, p.m., a recess was taken until 2 o'clock, p. m., of the same day.)

[fol. 1096] AFTERNOON SESSION

The hearing was resumed at 2:00 o'clock p. m.

Examiner Boyden: Proceed, Mr. Fitzgibbon.

E. H. BURDICK testified further as follows:

Direct examination (Concluded).

By Mr. Fitzgibbon:

Q. Mr. Burdick, how does the organization of the Utah Fuel Company and its affiliates compare with the others in the field; by "field" I mean Utah and Colorado?

$1,683,000 plus. To this should be added the $50,000 residual value, giving a value for the coal land on the assessed value basis of $1,733,605, and which would be comparable with the $1,887,540, used in my report.

If we are going to carry the thought of assessed value through in this comparison, to the assessed value of the coal lands should be added the assessed value of the depreciables, amounting to $903,970. The assessed value of the depreciables is low. The items that they get, such as buildings, houses, the visible items, you might say, are assessed at full value or more, as far as Utah is con- [fol. 1093] cerned.

However, using this assessed value of $903,970, gives a total of $2,637,000, odd. This compares with the $3,529,000, as shown in items 1 to 4, is that right?

Q. Yes, on page 33 of the exhibit.

A. I used as a third check, taking the assessed value of lands and adding to that amount the adjusted value of depreciables used in my report. The same amounts to $3,375,065, which compares with $3,529,000 in the report.

As a fourth check——

Mr. Fitzgibbon: Off the record a moment.

(Discussion off the record.)

By Mr. Fitzgibbon:

Q. Mr. Burdick, when referring to items 1 to 4 as being comparable, did you mean with the figure of $2,637,000, was I correct?

A. No, sir, because that included the value of the surface lands held by the Utah Grazing Lands Company, a subsidiary company. That is more properly expressed as Items 1, 2, 4 and 5. It compares with the value of the lands of the Utah Fuel Company, the lands of the Calumet Fuel Company, the depreciable property of the Utah Fuel Company and the depreciable value of the Calumet Fuel Company.

Q. What figure is that in your testimony that those items [fol. 1094] compare with?

A. Those four items compare with my—those totals that I have given compare with the sum total of items Nos. 1 to 4. That is the coal lands of Utah Fuel and the depreciables.

Now, the totals that I am going to give you now compare with items 1 to 4 and 5.

A. It is among the most efficient.

Q. And does that cover the executive and operating?

A. It does; the company has an exceptionally strong morale and I might say that the Utah Fuel is in the low cost group. Their costs will run probably 25 cents a ton under the field average.

Examiner Boyden: Will you read the answer?

(Answer read.)

By Mr. Fitzgibbon:

Q. Well now, do you tie those two together, I was just asking about the operation personnel and the executive personnel?

A. I tie the two together.

Q. Well, is there anything in the property that has something to do with the fact that they are in the low cost group? [fol. 1097] A. Yes, sir; in a general way I would say in some of the properties they have remarkable mining conditions; in others not so favorable.

Their low costs I think are primarily due to efficiency in management and operations.

Q. It has been suggested from time to time that these coal mines were very dependent upon the railroad serving them; have you any comment to make in regard to that?

A. I think that that is true, but on the other hand the railroads are very dependent upon the coal mines, they furnish them a large, a very considerable tonnage.

Q. On page 107 of your report you had a correction to make in that?

A. Yes, sir.

On page 107, in the fourth column from the right hand, the heading "Tonnage" the totals shown there are pointed off wrong. There should be a decimal point between the second and third figure from the right.

Q. To illustrate?

A. To illustrate, the first entry should read 10,531.75 tons.

Q. Can you tell us something about this slack coal?

[fol. 1098] Examiner Boyden: That should be all the way down the column?

A. The Witness: That should be all the way down the column, yes, sir.

By Mr. Fitszgibbon:

Q. Can you tell us something about this slack coal, what is slack coal, very briefly?

A. Slack coal is the nut size or what will go through whatever is adopted as the minimum screen aperture, it may be one inch or it may be 1-5ths inches.

Q. How does this coal compare with the oversize coal for the purpose of the railroad operation?

A. Well, it is just as good, and it is best adapted for use in automatic burning equipment; stoker.

Q. Just as good, no better no worse?

A. Well, you can't burn the large sizes in the stoker equipment so the coal has to be nut size for the stokers on locomotives.

Mr. Fitzgibbon: Off the record.

(Discussion off the record.)

By Mr. Fitzgibbon:

Q. Have you another correction on page 13?

A. I have; near the top of the pag item numbered 3, there should be added "Castle Gate No. 3 Mine". I speak of it as being opened at the top of the page, but do not [fol. 1099] include it in the summary, so line 3, shall read "Castle Gate No. 2 mine and Castle No. 3 Mine."

Mr. Fitzgibbon: That is all.

Examiner Boyden: Any cross-examination?

Mr. Hoffman: May I ask one question, please?

Examiner Boyden: Mr. Hoffman.

Cross-examination.

By Mr. Hoffman:

Q. In fixing approximately $5,000,000 for the going concern value of the Utah Fuel and its subsidiary companies, have you given any added weight to the fact that the depreciation and depletion are so to speak free of taxes?

A. No, sir.

Q. Now, in respect of those properties, you have valued on the so-called royalty basis, have you given any added value or consideration to the fact that a concern owning

those properties has customers, may have been established for some considerable time and may have what we more or less denominate as a going concern value?

A. I have given no value to such items as such, but in fixing the return of 6 per cent I recognize the fact that they are going concerns. With a new concern or a new operation you would probably capitalize on the basis of 8 or possibly 10 per cent.

[fol. 1100] By Examiner Kirby:

Q. Mr. Burdick, in valuing the Somerset property or the property of the Utah Fuel Company, which is summarized on page 26 of your Exhibit, have you in effect projected over a period of forty years an average net income per ton of 33.7 cents?

A. No, that is——

Q. Less the deductions, of course.

A. Less the deductions, yes, sir.

I assumed new money of 33.7 cents.

Q. That is after cost of operation, isn't it?

A. Yes, sir.

Q. Have you assumed that the cost of operation over that entire 40 year period would remain constant?

A. No, sir, the best that we can do is to deal with averages and judging the future by the experience of the past, modified by the conditions as we know them as of today.

In effect though it is a constant of 14.7 cents, or new money of 33.7 cents.

Q. Well, the 33.7 cents is the average net income per ton, isn't it?

A. Before depreciation and depletion.

Q. And after operating expenses?

A. Yes, sir.

[fol. 1101] Q. At the end of 40 years you will be approaching the point of exhaustion of the reserves of some of this coal?

A. No, sir. There are reserves in the Somerset District that are estimated at the present time as 40,000,000 tons, and I am only ascribing production of 8,000,000 tons, I believe it is to the Somerset operation.

Q. Well isn't it true, however, that at the end of forty years some of the workings will have been exhausted.

A. Oh, yes, certain parts of the mine will have been exhausted.

Q. And as you approach that point doesn't the unit cost of operation increase?

A. That depends on the efficiency of the operation. If they got to a retarding basis the much less costs are at the end of operation.

In other words, if you get to the exterior boundaries and mine back, your costs decrease.

Q. Well, isn't there to that extent more shoring and timbering?

A. Not on the completely exhausted, wholly exhausted territory, that in this case would fill up with water. There will be, this Somerset mine has been already partially retarded from the side lines, but the Somerset mine, barring [fol. 1102] unexpected openings, will be in operation on the same unit, that is there is the physical supply after the 40 year period. You see the coal outcrops, there is nothing to stop them making new openings as different places on the property.

Q. Well, have you assumed that your taxes will remain at the present level?

A. Yes, sir; in effect, I am assuming average earnings. There will be fluctuation of other costs, be what they may, and it of course, is not susceptible of in fact determination.

Q. That also involves an assumption of the price of the coal?

A. Yes, sir.

Q. To be realized?

A. Yes, sir.

Q. And what has that assumption been?

A. What has what?

Q. What has that assumption been with respect to the price to be realized?

A. That its relation to the cost of production will remain constant, your ratio of margin of profit between the two that I use now.

To put it another way, if coal is an essential and it is going to be produced, it will be produced at a profit, and [fol. 1103] if the cost of producing it goes up the cost that is obtained for that product will also go up proportionately.

Q. That is an assumption?

A. Well, that is the experience in the past.

Within the range of my experience coal used to sell for $1.00, 98 cents, $1.05 a ton and yield a profit. Of course, in fixing the value, going into any such future period as 40 years, outside of the matter of reserves, the whole question of value resolves itself into one of judgment as to what is going to be returned in the way of profit.

There is no exact method.

Q. Have you considered the possibility that the cost of production may rise to such point that this coal will be no longer commercially valuable?

A. Oh, that has been in my mind. Of course, if it is true there it will be true over the whole United States; costs are comparable.

Q. You had in mind that a substitute would be found for this in other fuels?

A. That is possible. And of course, when you go to consider that, there is the thought that our future source of oil will be from coal. With the increase in the value of crude oil, I think that we will turn to distillation of coal [fol. 1104] or liquifaction of coal.

Q. Is the coal in this field susceptible to that treatment?

A. Yes, sir.

Q. You spoke of assessed values as some test of the estimates you have made. Do you in your work generally regard assessments, or assessed values as any fair criterion of value?

A. In regard to coal mines in Utah, yes, sir. The taxing structure has been worked out rather carefully and the amount recoverable reserves have been worked out very carefully during the last sixteen years, and answering that questions, the taxation of coal mines is rested on rather sound factors.

Examiner Kirby: That is all.

By Examiner Boyden:

Q. In your study of the value of the property of the Utah Fuel Company, as I understand it, you have ventured to indicate that that represents the value of the stock of the Utah Coal Company, is that correct?

A. Well, the values that I have recited here, plus the subsidiary companies, I assume is the value of the stock. Now, I am not an accountant, but I assume that what the

property is worth as represented by so many shares of stock, that represents the value of the stock.

[fol. 1105] Q. Well, what kind of a value would that be, would it be intrinsic value or the exchange value of the stock, or either?

A. Well, what I have tried to do in this report is to fix a value of the property at such a figure that a willing buyer would pay that much for the property.

Q. And you are referring to the property and not the stock, is that correct?

A. Yes.

Q. Is that correct?

A. Yes.

Q. This property in the past has furnished coal to the Rio Grande, has it not?

A. Yes, sir.

Q. Do you recall whether or not that coal has been furnished at the reduced price or whether it has been furnished at commercial prices?

A. Of late years at least I think it has been furnished at the commercial price.

I have that schedule here, if you desire me to read it, but it is the commercial price.

Examiner Boyden: No, I do not care for it.

By Examiner Boyden:

Q. Well, it is true, is it not, that the production of the company in the past has been affected by the demand, [fol. 1106] affected to some extent by the demand; of the railroad for coal?

A. Yes, sir.

Q. And your determination of the value of the property really reflects that demand because it is based on the production of the company, that is true, is it not?

A. Yes, sir.

Q. And the proportion which that is of the total production in Utah?

A. Yes, sir.

Q. In view of the fact that that production has been affected by the railroad demand, is it proper to consider that the prices that you will get for the property is a commercial price?

A. I think so, for this reason: That in modern practice the coal orders from a railroad, at least in our field, are apportioned very largely among all of the producers in that field.

In other words, the railroad is not buying from only one mine all of its coal or nearly all of its coal. They spread their railroad orders around pretty closely in proportion to the output of the mine.

Of course, that was not true in any early day.

Q. Well then, you think that the value of this property which you have stated supports a fair indication of the fair exchange value of the stock, as I understand you?

[fol. 1107] A. Yes, sir, that is my idea.

Q. I am wondering if a purchaser of stock, or contemplated purchaser of the stock would give such consideration as you have to the possible production of the property for the next forty years.

A. Well, that is going a long ways into the future. That is the usual span of life in valuing coal properties that is used.

Q. Well, if you were purchasing the stock wouldn't you be inclined to consider the production of the company and its earnings over recent years and give that greater consideration than you would for in the future?

A. Yes, and in the compilation of my figures I have taken their new money earned since 1928.

Q. Well, if I understand your figures correctly, you have taken an average that runs 40 years ahead at the present time, haven't you?

A. Oh, yes, yes.

Examiner Boyden: Are there any further questions?

Mr. Nicodemus: I would like to ask one or two questions, Mr. Wyer?

Mr. Wyer: Yes.

By Mr. Wyer:

Q. Mr. Burdick, on page 11 of your report you say that in 1929 the natural gas line was completed in Salt Lake City. Do you know exactly in what month in 1929?

[fol. 1108] A. No, I do not.

Q. You do not know whether it was early in the year or late in the year?

A. On one of the graphs here it shows that graphically. My recollection is that it was late in the year, Mr. Wyer. From the placement of the letters "Advent of Natural Gas" in reading to the top of the page, I would judge from its position that it was along late in the year of 1929.

Q. Have their been other parts of the territory served by the Utah Fuel Company where natural gas has come in in recent years?

A. Well, you mean in Utah?

Q. In other parts of the territory than Utah.

A. Well, they have had the natural gas, of course, in California, and in Colorado, but it comes from that Calumet Fuel Company over in Colorado very largely.

Q. Do you know when natural gas was brought into Colorado?

A. No, I do not, I haven't the date.

Q. Now, on page 21 of your report, near the bottom of the page you say "the output of coal in Utah has been seriously curtailed by three main factors," and the first factor is "the wealth of cheap oil from Texas and Cali-[fol. 1109] fornia." Do you know when those factors began to be effective on the output of coal in Utah?

A. Well, there was a time in California when they were quite an interference, prior to 1921. Then shortly after 1921, about 1923 or '24 the West Texas fields were opened up and then began another great interference with the coal business.

Q. Has that continued since that date?

A. Yes, sir.

Mr. Wyer: That is all.

Examiner Boyden: Any further questions?

(No response.)

Any re-direct?

Re-direct examination.

By Mr. Fitzgibbon:

Q. Mr. Burdick, Mr. Hoffman asked a question in regard to the value to the company in its old customers and you went on and spoke of other aspects of it on this whole question.

Has this company benefited by its age and its connections in the field?

A. Yes, sir.

Mr. Fitzgibbon: That is all.

Examiner Boyden: Witness excused.

(Witness excused.)

[fol. 1110] Mr. Fitzgibbon: Now, I would like to call Mr. Korte.

Examiner Boyden: Any objection to Exhibit No. 253?

(No response.)

Received.

(Exhibit No. 253, Witness Burdick, was received in evidence.)

[fol. 1111] WITNESS WILLIAM WYER

By Mr. Marsh:

Q. Mr. Wyer, can you tell me whether or not it is true that half of the common stock of the Denver and Rio Grande Western is held by the Railroad Credit Corporation as pledged by the Missouri Pacific, and one-half is held by Reconstruction Finance Corporation as the pledge of the Western Pacific?

A. That is correct.

Q. Through voting trust?

A. That is correct.

Q. And substantial amounts of the preferred stock are similarly held?

A. Yes.

[fol. 1112] RENEWAL OF MOTION TO STRIKE

Mr. Nicodemus: Well, before we proceed to call witnesses, I would like to offer a further motion.

The Debtor renews its motion submitted at the last session, to strike from the files the reports of the Bureau of

Accounts and the Bureau of Valuation, stated to have been filed herein under Paragraph 11, of Sub-Section C of Section 77 of the Bankruptcy Act, on all grounds heretofore stated, and on the further ground that any document having the evidenciary value prescribed by said Paragraph 11 [fol. 1113] must be introduced at a formal hearing and by a witness whom all parties have a constitutional right to cross examine.

Examiner Boyden: The motion is denied.

Mr. Nicodemus: The Debtor excepts to the denial of the motion to strike the documents from the file, and also excepts to the denial of the adjournment.

In view of the denial of the motion to strike the documents from the files, the Debtor now requests the Commission to tender for cross examination by all or any parties in this proceeding, the following witnesses attached to the Commission's Bureau of Valuation:

Robert W. Lacey, Head of the Accounting Section, George S. Douglass, Engineer attached to the Engineering Section.

Examiner Boyden: Of course, those two individuals have never been presented as direct witnesses in this proceeding.

Mr. Nicodemus: That is one of the defects, we think, that underlies the filing of these documents, that they have not been presented by witnesses who——

Mr. Anderson: Have you made the point that they are not presented by witnesses?

Mr. Nicodemus: I have.

Mr. Anderson: And have you raised the question as to [fol. 1114] who the witnesses are?

Mr. Nicodemus: Not as yet; I have asked them to tender these two witnesses for cross examination. I understood that perhaps some other parties to the case had other witnesses that they would like to have tendered for a similar purpose, is that correct?

Mr. Anderson: Mr. Examiner, at the former hearing the question of calling the representatives of the Bureau of Accounts and the Bureau of Valuation was briefly discussed. At that time the presiding examiner made the statement that in such event they would be called as witnesses for the party calling them. I rather acquiesced in that point of view when I was on my feet at the time.

Upon further consideration I have reached the conclusion that that is not sound, that this evidence is presented by the Commission and not by us, and I am inclined strongly to the view, and respectfully submit for your consideration, that if the request is made or the evidence is challenged, that the Commission produce such witnesses as it may deem necessary to present the evidence in a legal way and then to give us the right to cross examine.

If, on the other hand, and I wish to withdraw any state- [fol. 1115] ment I made on the record to the effect that they would be our witnesses.

On the other hand, if that is not done, it seems to me they should be called for cross examination. I am very reluctant to raise technical questions either of procedure or of law before the Commission, but, as we all know, this case ultimately goes to the Court and the situation there is rather different than it is before an administrative body like the Commission, and therefore I would like to have the record straight on that question, and it is our desire this morning and we again would ask the Commission to call Dr. Wylie, the Head of the Bureau of Accounts, as I understand it, and Mr. Douglass, who has also been called by the Debtor.

We would like an opportunity to cross examine these two gentlemen under such regulations, and under such conditions as you may rule, but I have stated my own view on the situation on the record.

Examiner Boyden: But do you desire a definite ruling as to whether those witnesses will be your witnesses or the Commission's witnesses, before you proceed?

Mr. Anderson: Well, I think it would be desirable to have a ruling on that point, so that we may know the status, but [fol. 1116] if they were called as our witnesses I think we have undoubtedly the right to conduct a cross examination as distinguished from direct.

Examiner Boyden: Well then, the ruling is that witnesses are not Commission witnesses but that you should proceed to present them as your own witness if you desire to produce testimony to rebut the presumptions of accuracy of the Commission's reports.

Mr. Anderson: You will permit an exception to that ruling for the record?

Examiner Boyden: The record shows an exception.

Mr. Nicodemus: And exception on behalf of the Debtor.

The Debtor now requests that the three witnesses be called in the order that counsel may agree upon. I think perhaps Dr. Wylie should be the first witness.

Mr. Anderson: Is Dr. Wylie here, I think he is.

Mr. Nicodemus: He is, and I would like to have the record show that these witnesses are not called by the Debtor voluntarily, but are called by the Debtor involuntarily and under the duress of the Commission's ruling to which we have excepted, and that they are to be regarded as adverse witnesses which the parties to the cause have a right to cross examine.

Mr. Anderson: I think my position and exception are [fol. 1117] sufficiently stated on the record.

* * * * * * * *

[fol. 1118] Mr. Nicodemus: I may say that since the adjournment before lunch, I have conferred with our associates and we agree that it would not be a useful thing to do to offer any evidence here on the seven or eight or more volumes that constitute the underlying data in respect of which we requested full information.

In reliance upon the statement that the Debtor and its counsel would be given free access to the underlying data in the office of the Bureau of Valuation, including the full and free disclosure on its part of all prices that underlie the multipliers, we excused the witness.

Examiner Boyden: Are there any other questions from Mr. Douglass?

(No response.)

Mr. Douglass is excused.

* * * * * * * *

[fol. 1119] Frank C. Squires was sworn and testified as follows:

Direct examination.

By Mr. Nicodemus:

Q. Mr. Squires, will you state your full name and your present occupation?

A. Frank C. Squires; Valuation Engineer; Association of American Railroads.

Q. How long have you been identified with railroad valuation problems?

A. Twenty-five years or so.

Q. Have you been actively engaged in valuation problems in the last year?

A. Yes, sir.

Q. Have you had special opportunity to study the price trends?

A. Yes.

Q. In connection therewith?

A. That is part of my work.

Q. How do the 1935 period prices compare with the spot prices in materials and supplies and other elements that enter into the value of railway property?

A. As of today?

Q. As of today.

A. Those today for most items are substantially higher than those of 1935 and the average value, I think, is today [fol. 1120] substantially higher than as of 1935.

Q. If 1937 spot prices were applied to the units that enter into the inventory of the Denver & Rio Grande Western Railroad, would the value of those—would the application of those prices produce a different result, substantially different result from that set forth in the valuation report filed by the Commission that is under discussion in this proceeding at this hearing; I refer specifically to the item, cost of reproduction new, $168,729,747 that has been referred to by the previous witness?

A. Yes, present day prices would produce substantially more than that amount, assuming that my understanding of how those prices were derived, those prevailing in 1935, is correct.

Q. Those differences will run into many millions of dollars?

A. Yes, sir.

Mr. Nicodemus: That is all.

Examiner Boyden: Do you know whether those prices used in preparing that Bureau of Valuation estimate was spot or period prices?

A. I understand from the exhibit and the explanation they are period prices.

Examiner Boyden: And the prices to which you have testified, that is, the 1937 prices, that is a spot price?

[fol. 1121] A. Yes.

Examiner Boyden: A price applicable in the year 1937 only?

A. Yes, price of today, or the last two or three months.

Mr. Nicodemus: That is all I have.

By Examiner Kirby:

Q. Have you worked out the application of the 1937 spot prices to the D. & R. G. W. inventory as is reflected in the Bureau of Valuation report?

A. No, sir.

Examiner Kirby: That is all I have.

Mr. Nicodemus: Thank you very much.

Examiner Boyden: You are excused.

(Witness excused.)

Examiner Boyden: Mr. Powers is here now.

Mr. Nicodemus: Mr. Powers.

Lawrence L. Powers was sworn and testified as follows:

Direct examination.

By Mr. Nicodemus:

Q. Will you give your full name for the record?

A. Lawrence L. Powers.

Q. You have stated your name; will you now state your occupation?

A. Head accountant and auditor, accounting section, Bureau of Valuation, Interstate Commerce Commission.

[fol. 1122] Q. You are appearing here as a witness in substitution for Mr. Lacey?

A. Yes, sir.

Q. Are your familiar with the document dated March 1, 1937, described as report of the Bureau of Valuation on matters as of December 31, 1935, affecting the Denver & Rio Grande Western Railroad Company and its subsidiaries?

A. Yes, sir.

Q. On page 3 of this report, sheet 1, at the head of the page is an item, "Denver & Rio Grande Western Railway Company, original cost $142,800,512." Will you state from what data and by what process the figure of $142,800,512 was arrived at; by what process and from what underlying data, or the other way around, what underlying data and by what process?

A. With respect to road items and general expenditures, we started with cost of reproduction in the basic valuation in 19(a) cases, and to that we have added the amounts reported by the carrier through order 3, and deducted the retirements reported by the carrier through Order 3, up to and including 1932.

For 1933, 1934 and 1935, we used the gross debits and credits which came from the carriers' records. Now those costs they represent were built up by the Valuation Section. [fol. 1123] For equipment, we started, in the case of the Denver & Rio Grande Western, with the Order 8 costs as reported by the Commission in the final 19(a) valuation reports, adding to those costs the costs reported under Order 3 for equipment and additions and betterments added, less the amount reported under Order 3 for the equipment retired.

Q. That completes your answer?

A. I think that completes the answer.

Q. Well, then, I understand from your answer that this is purely an estimate based upon reproduction value on certain price levels and is in no way related to or in any way based upon evidence of original cost.

A. Well, of course, the original cost at the date of basic valuation, we did not have, and we have used the cost of reproduction as at date of basic valuation as the beginning point on basis of decisions of the Commission in the Roscoe, Snyder & Pacific Case, and various other valuation dockets.

Q. Now, is it not a fact, however, that there was evidence of unquestioned character as to the actual original cost of many items that enter into this property which were not used by the Bureau?

A. There might have been evidences of original cost to date of certain pieces or classes of property in the basic [fol. 1124] valuation that were not considered in our figures.

Q. Well, isn't it a fact that that evidence was rejected and the estimate that you have described substituted, regardless of the fact that the evidence of actual cost would have produced a higher figure than the estimate?

A. Not to my knowledge, I do not know anything about rejecting anything.

Q. Well, it is true, is it not, that the entire figure is based upon the estimate that you have stated here in the docket?

A. Well, when we start out with the date of valuation, not the entire figure, no, but the portion of it that applied to road might be called an estimate, but by the time the retirements from the inventory are deducted from that amount, at the end of 1925, 64 per cent of that total, 64.4 is actual and 35.6 per cent is estimated.

Q. Well, the entire inventory, as it existed at 1919 was—the entire original cost as of that date was estimated on the basis of 1910-1914 prices?

A. That is right.

Q. Now, I will ask you whether you can furnish, in the form of an exhibit, an analysis of the item of $142,800,512 to enable the parties to this proceeding to check the computation?

A. Why, we could do that if the Examiner so rules, but [fol. 1125] it would be quite a voluminous exhibit. The details are all available for examination.

Mr. Nicodemus: He has made a similar ruling in connection with the reproduction new, and I simply asked to make the record.

Examiner Boyden: How long would it take to prepare it?

A. It would take several weeks, I think, to prepare it in the form of an exhibit.

Examiner Boyden: Are you asking that it be prepared?

Mr. Nicodemus: We ask that it be prepared in the form of an exhibit.

Examiner Boyden: The request is denied. We will receive any evidence that you have to offer at this time, understand, Mr. Nicodemus, and Colonel Anderson.

Mr. Nicodemus: I thank you.

Examiner Boyden: And the underlying data relied on are used by Mr. Powers and the accounting section will be made available for your examination in the offices of the Commission.

Mr. Nicodemus: At convenient times, between now and the time this case is submitted?

The Witness: Yes, and after that.

By Mr. Nicodemus:

Q. In the descriptive statement that appears on page 5 of the report of the Bureau, reference is made to the in-
[fol. 1126] clusion of subsequent additions and retirements as adjusted, ascertained from reports of the carriers under valuation order No. 3, and so forth. Will you indicate the nature and the extent of the adjustment to which reference is there made?

A. Well, those adjustments would consists of any exceptions which the Section would take either to the additions or the retirements or in the way of retired property that had not been retired, or excluding the additions that were not considered as original cost to date, and such things as that.

Mr. Nicodemus: We have a detail of all of those exceptions.

Q. Will you prepare and submit in exhibit form a memorandum showing the adjustments that are referred to on page 5 of the Bureau's reports?

Examiner Boyden: How long will that take, Mr. Powers?

A. It seems to me, Mr. Examiner, that that could very easily be checked in connection with the examination of the underlying record and we could not only explain it but help the carriers' representatives in pointing these things out.

Examiner Boyden: How long would it take to prepare the exhibit, approximately?

[fol. 1127] A. The exhibit of the exceptions, probably be a week or ten days.

Examiner Boyden: The request is denied. The information is available to counsel.

By Mr. Nicodemus:

Q. Mr. Powers, are you familiar with the property of the Denver & Rio Grande Western Railroad Company and its subsidiaries?

A. By actual experience?
Q. By actual experience.
A. No, sir.
Q. Are you familiar with the tie situation?
A. No, sir.
Q. Well, if you were advised that the original ties had been practically entirely replaced by treated ties, and I will have that covered by the next witness; could you state whether the cost of the treated ties, the excess cost, is reflected in the item of original cost as reported in the documents we have under consideration?
A. Yes, I can answer that by saying they are not.
Q. They are not? Thank you.
A. Under ruling of the Commission.

Mr. Nicodemus: That is all we have with this witness.
Examiner Boyden: Any cross examination?
Mr. Anderson: I understand that in your opinion the [fol. 1128] original valuation, 1919, was, for ratemaking purposes, based on 1910 to 1914 prices, wasn't it?
A. The report so states, for ratemaking purposes.

Mr. Anderson: That is all.

[fol. 1129] MOTION TO STRIKE

Mr. Anderson: In order to make the record clear I want to submit a motion. First, as to the report of the Bureau of Accounts, and second, as to the report of the Bureau of Valuation.

I wish to move to strike out so much of the report of the Bureau of Accounts as deals with items other than those included under the heading, "Schedule 1a: Modifications necessary to correct accounting not in conformity with the Commission's regulations."

That is, I do not move to strike out those modifications, but I do move to strike out that portion of the report under the other three headings in the schedule in italics in the court record.

I wish to make the same motion with respect to the other railroads other than the Denver, applicable to the same items, which I think are sufficiently described, and for grounds of that motion I desire to state (1) that the report

of the Bureau of Accounts is not made in conformity with [fol. 1130] the requirements of Section 77 of the Bankruptcy Act,

Examiner Boyden: In what respect, Colonel Anderson?

Mr. Anderson: Do you want me to argue the question, sir?

Examiner Boyden: I should like for you to say in what respect.

Mr. Anderson: I just simply say that the Bankruptcy Act requires a report on the accounts of the company and not on a theoretical hypothesis of what they might be ten or fifteen years from now in the light of new conditions.

That is one ground, and others I might state, I do not want to argue the question.

In the second place, the reports are incorrect in facts, incomplete and highly prejudicial to the rights of the parties in this case and are not, therefore, admissible as evidence.

Examiner Boyden: When you say they are "incorrect in fact" you refer to the facts set forth in the testimony heretofore?

Mr. Anderson: In the reports themselves, which show on their face, as well as in the testimony, that they are predicated upon assumptions as to statutes not in existence and as to other facts not in existence as to the future, and [fol. 1131] that they have undertaken to charge those companies and those accounts with all the losses that they can and credited them with none of the gains.

Examiner Boyden: Are there any incorrect facts set forth in the report which have not been developed on the record?

Mr. Anderson: I do not now recall that there are facts not developed because I cannot carry the entire record in my mind, but I reserve the right to point out at another place than this.

I have in mind the report, that part of the report insofar as it refers to the last three items. I am eliminating now the first item, but the last three items do not deal with facts at all, but deal with hypotheses and assumptions, and that is not evidence.

Examiner Boyden: Well, I merely brought that up because I want it clear that we are ready to listen to you and to any evidence you may have at this time with respect to inaccuracies and incorrect practices in those reports.

Mr. Anderson: I am not in position now, Mr. Examiner, to present any evidence on that subject. I have only the reports themselves, and very brief conversations with the representatives of the Bureau of Accounts, and not a proper examination of the accounts, and if I do have an [fol. 1132] opportunity, after the record is closed, of course, I could not put that in evidence because that would be my own examination and would be of no benefit to the record. I could not use it in argument, either before the Commission or the courts.

Further, the use of these reports, accounting reports, in the light of the facts disclosed by this record as basis for determining a sound and equitable plan of reorganization, or as affecting in any way the rights of our clients, the insurance group, and the other parties of interest in this case, would be in effect, taking into consideration the method in which they have been prepared, a denial to them of due process of law and in violation of their constitutional rights to the protection of their property under the Federal Constitution and amendments thereto, and especially in effect a taking of their property for public use without just compensation.

For these and other reasons which I reserve the right to urge, I desire to submit the motion for the dismissal of the reports of the Bureau of Accounts as to all the properties involved in this proceeding.

I recognize that the reports having been filed by order of the Commission, the Examiners cannot grant this motion, but I put the motion on the record for the purpose [fol. 1133] of arguing it before the Commission, before the court, or any other forum at another appropriate time, until this case is finally disposed of in whatever forum it may go.

Off the record.

(Discussion off the record.)

Examiner Boyden: I that all the motions you have with respect to the reports?

Mr. Anderson: The accounting reports, yes.

Examiner Boyden: Of the reports of the Commission?

Mr. Anderson: The accounting reports: I then want to make a motion with respect to the Bureau of Valuation.

Examiner Boyden: Well, the motion with respect to the reports of the Bureau of Accounts is denied.

Mr. Nicodemus: Prior to the denial of that motion, I would like to unite in it on behalf of the Debtor and its subsidiaries.

Mr. Anderson: Now, with respect to the report of the Bureau of Valuation filed with respect to the Denver & Rio Grande Railroad Company and its subsidiaries, including the Denver & Salt Lake Railroad, I desire to move to strike out these reports from the record in this case upon the ground, among others, that they do not constitute any basis whatever for the valuation of this property in a reorganization proceeding, but are misleading and preju- [fol. 1134] dicial to the rights of the parties in that they undertake to state elements of value without stating what elements of value are involved in a true valuation, and such elements of value are predicated upon price conditions and other factors shown by the record to have been ascertained for the purpose of making a valuation for rate making purposes and not for making a valuation for reorganization purposes, and ascertained more than twenty years ago when the value of the American dollar was different from what it is today and all the other factors entering into the value of property were highly different from what they are today, and the record does not sufficiently disclose the basis of such valuation to enable it to be considered as evidence in this cause.

Second, that the reports undertake to show the depreciated value of this property when there is no depreciation in the property for the purposes of reorganization or for market value, but, it is more valuable today than it has ever been in its history. And they do not take into consideration elements of earnings and other factors of goodwill, and going concern value, which are essential to the ascertainment of the value of this property and the issue of the securities thereon.

That the reports are in other respects defective and prejudicial to the interests of the parties whom I repre- [fol. 1135] sent, and are not competent evidence as to the rights of any party to this proceeding, and in incomplete form.

Fourth, that if these reports be used or considered as evidence affecting the rights of the parties in this proceeding, it will constitute a taking of the property of the owners of the securities of the Denver for public use, with-

out just compensation, in direct violation of the provisions and amendments of the Federal Constitution.

That the reports have not been prepared in accordance with and do not conform to the requirements of Section 77 of the Bankruptcy Act, and are not admissible in this cause.

Now, as to these motions, I wish to say that I make them with all possible deference to the Commission, with no desire whatever to obstruct, delay or in any way embarrass the administration of the Act or the performance of my duties under the Act, but it is manifest from the reasoning with respect to the use of similar reports in other cases that if these reports are used for the purposes indicated, serious legal and constitutional questions are involved which I feel it is my duty to reserve upon the record and present at the proper time and in the proper forum.

Mr. Nicodemus: The Debtor unites in that motion on be-
[fol. 1136] half of itself and all of its subsidiaries.

Examiner Boyden: Motion denied.

Mr. Anderson: And I wish in that connection to add that I object to the use of these reports as prima facie evidence of any fact in this case, because the evidence discloses they are not based upon facts but upon assumptions.

Mr. Nicodemus: The Debtor and its subsidiaries join in that additional ground for the motion.

Examiner Boyden: The objection is noted.

. . . . . .

[fols. 1137-1138] Witness T. A. Thompson.

By Mr. Anderson:

Q. Mr. Thompson, will you please state your name and your position with the Denver & Rio Grande Western Railroad Company or with the trustees thereof?

A. T. A. Thompson, general auditor.

Q. How long have you been connected with the Denver?

A. 24 years.

Q. You have been the general auditor of the trustees since their appointment in 1935; have you not?

A. No. Since 1937.

Q. 1937. Before that you were connected with the property and also an officer of the trustees; were you not?

A. I was.

Q. As general auditor you have charge, as I understand, of all the accounting services of the trustees and of the property.

A. I do.

Q. Now, I hand you a printed document entitled "Report of the Denver & Rio Grande Western Railroad Company, Wilson McCarthy and Henry Swan, Trustees, Year Ended [fol. 1139] December 31, 1940."

Can you identify that as the annual report issued by the trustees to its security holders for the year 1940?

A. I do.

Mr. Anderson: I would like to offer that in evidence and give it an exhibit number, sir.

Exam. Boyden: That will be Exhibit No. 260.

(Exhibit No. 260, Witness Thompson, marked for identification.)

Mr. Anderson: 260.

By Mr. Anderson:

Q. I understand that the Denver & Salt Lake Railway Company is separately operated by the Denver & Rio Grande Western Railroad Company and is operated by the corporation and not in the hands of trustees. I am correct about that?

A. That is correct.

Q. I asked you to present official report of that company, and I now present you "Fourteenth Annual Report of the Denver & Salt Lake Railway Company, for the Calendar Year Ended December 31, 1940," a printed document, and ask you if you can identify that as a report issued by that company, of your own knowledge, to its stockholders for the year 1940?

A. That is the report.

Mr. Anderson: I off that in evidence as Exhibit No. 261.

[fol. 1140] Exam. Boyden: Marked as Exhibit No. 261.

(Exhibit No. 261, Witness Thompson, marked for identification.)

By Mr. Anderson:

Q. Mr. Thompson, I requested the trustees to have prepared under their direction, I presume by you, a statement

separating the D. & R. G. W. operating expenses between freight and passenger business on the ICC basis, developing a 1940 unit cost of operation in terms of gross—of cost per gross ton mile and cost per passenger mile for the years 1936, 1937, 1938, 1939, and possibly 1940.

Have you prepared or had prepared under your direction a statement in response to that request?

A. I have.

Q. This statement entitled "Denver & Rio Grande Western Railroad Company—Wilson McCarthy and Henry Swan, Trustees—D. & R. G. W. earnings estimated on basis of 1940 unit costs," is that the statement in response to the request which I made?

A. That is.

Mr. Anderson: And I would offer that in evidence, sir, as Exhibit No. 263, I think is the number.

Exam. Boyden: Mark it 262.

(Exhibit No. 262, Witness Thompson, marked for identification.)

By Mr. Anderson:

Q. That statement is a correct statement of what it [fol. 1141] purports to be, is it not, made under your direction?

A. It is.

Q. Mr. Thompson, during the period of the trusteeship there have been, as appears from this record, considerable expenditures for improvements and betterments to the property carrying large charges to operating expenses incident to or through improvements. You have made no adjustments on that account in making up the statement 262, have you, taking it as——

A. No statements—no adjustments of any kind.

Q. That is right.

Exam. Boyden: How many sheets are there in that statement, Mr. Anderson?

Mr. Anderson: I beg your pardon?

Exam. Boyden: How many sheets are there in that statement?

Mr. Anderson: Only one sheet in that statement. 262 is one sheet. I will have the record show that as to the others.

By Mr. Anderson:

Q. I also asked you to make up a statement for the years 1939 and 1940 for the Denver & Salt Lake, or have them made and present them at this time. Have you such a statement?

A. I do?

Q. You have handed me a statement in response to that inquiry, a paper consisting of one sheet, entitled, "The Denver & Rio Grande Western Railroad Company—Wilson [fol. 1142] McCarthy and Henry Swan, Trustees—D. & S. L. 1936-1940 Earnings Restated on Basis of 1940 Unit Costs."

Q. Is that correct?

A. That is correct.

Mr. Anderson: If so, I will offer that exhibit as the next exhibit.

Exam. Boyden: Mark Exhibit 263.

(Exhibit No. 263, Witness Thompson, marked for identification.)

By Mr. Anderson:

Q. What you said with regard to no adjustments as to improvements and betterments made in making up that other statment applies also to that statement?

A. That is correct.

Q. I then asked you to take these two statements and make up a statement showing the earnings of the two properties upon a consolidated basis for each of the five years, and in doing so not to make any—not to include any alleged savings or prospective savings from consolidation if the same was effective, but to make a note to that effect on the statement.

Have you such statement?

A. I have.

Q. You have handed me a statement with a heading as already given on the others introduced, but sub-heading "Combined D. & R. G. W. and D. & S. L. Earnings, 1936-1940, Restated on Basis of 1940 Unit Costs."

[fol. 1143] That is a statement prepared in response to the request I made; is that true?

A. That is correct.

Mr. Anderson: I would offer that in evidence as the next exhibit number.

Exam. Boyden: Exhibit No. 264.

(Exhibit No. 264, Witness Thompson, marked for identification.)

By Mr. Anderson:

Q. I also requested the trustees to have prepared a statement being a forecast of net available interest for the D. & R. G. W. in the year 1941. Have you prepared such statement and, if so, will you explain just what it means or is, how it is prepared?

A. This is a statement showing the actual figures for the first three months of 1941 and estimated for the balance of the year and based on the projected work and estimated revenue for the balance of the year.

Mr. Anderson: I present the statement with the general heading indicated above, sub-heading "1941 D. & R. G. W. Income Forecast (three months actual, nine months estimated)" with certain explanatory footnotes which I will offer in evidence as the next exhibit.

Exam. Boyden: Mark it as Exhibit No. 265.

(Exhibit No. 265, Witness Thompson, marked for identification.)

[fol. 1144] Mr. Anderson: I think I should have stated at the beginning and would like to state now that at the hearing in Denver the annual reports of the property and its earnings, statements up through the year 1938 and for as much as was available for 1940, were presented, and I take it is in evidence before the Commission in this hearing, and the annual reports which I presented this morning will bring it up to date. I didn't present the intervening reports because they are all in the record. See, the original record closed in 1936, and at Denver in the hearing there we presented the intervening reports and data and earnings on income, and now these reports presented this morning bring it up to date. I understand all the evidence presented at Denver is before the Commission here.

By Mr. Anderson:

Q. I also asked that you would present a net available for interest for the D. & S. L. for the year 1941. Have you

such statement prepared? This statement, as I take it, is made up in the same manner as the one you previously presented, that is, actual income accounts for the first three months and estimated or forecast for the remainder of the year?

A. That is correct.

Mr. Anderson: The statement which the witness has handed me is entitled "Income Forecast—12 Months Ending December 31, 1941—January to March Actual, April to [fol. 1145] December estimated," with certain footnotes and explanations thereof.

I offer it in evidence.

Exam. Boyden: Mark it as Exhibit 266.

(Exhibit No. 266, Witness Thompson, marked for identification.)

By Mr. Anderson:

Q. I also requested a statement—that the statements referred to above, that is, the last two exhibits, be put together on a consolidated basis omitting any estimated savings from consolidation, with a note to that effect. Have you such statement?

A. I have.

Mr. Anderson: The witness hands me in response to the inquiry a statement with the general title and sub-title of "Combined D. & R. G. W. and D. & S. L. Income Forecast, 1941 (three months actual, nine months estimate)."

I offer it in evidence as the next exhibit, sir.

Exam. Boyden: Mark it Exhibit 267.

(Exhibit No. 267, Witness Thompson, marked for identification.)

By Mr. Anderson:

Q. I also requested that there be prepared statement showing the extraordinary expenses—scratch that, will you please?

Mr. Thompson, your forecast for the year 1941 also is based upon results including the extraordinary expenditures [fol. 1146] contemplated to be made in that year; is it not?

A. That is correct.

Q. You have not, in other words, adjusted the earnings in any way or the forecast in any way with respect to charges to operating expenses which result from the improvements which the budget calls for during the year 1941?

A. The forecast includes the effect of improvements.

Q. Yes.

Exam. Jameson: How much does that mean? Do you know in a rough way how much that would affect it, what you call extraordinary expenses?

The Witness: I can't give you the accurate figure, the exact figure. I would say a million dollars with charges to operating expenses in connection with improvements.

By Mr. Anderson:

Q. In other words, your improvement program will carry to operating expenses approximately a million dollars of charges?

A. That is correct.

Q. Such as maintenance, and so forth, which you have carried into your operating expenses in arriving at the results shown in the statement you have presented——.

A. That is correct.

Q. —all the way through?

Exam. Boyden: Well, does that million dollars all represent an extraordinary improvement program?

[fol. 1147] The Witness: Not necessarily. In other words, the rail program will take $650,000, $700,000 of it alone: That is a normal rail program.

Exam. Boyden: How much of it would you say was extraordinary?

The Witness: I don't believe I can answer that question.

By Mr. Anderson:

Q. Is it not a fact that you this year on account of the peculiar conditions are accelerating improvements to or repairs to a large number of cars which you had contemplated—the trustees had contemplated deferring over a period of years and, if so, will you state the facts with respect to that, so far as you know them, and by consulting Mr. Bradford?

A. Well, the program this year includes the rehabilitating or rebuilding, probably not complete rebuilding, but the ex-

penditure of $250 or $300 a car on some 14 to 1,500 boxcars that would ordinarily have been spread over a period of 5 years.

Q. I see.

A. Because of the defense program and the prospective need for the equipment, why, the work is going to be done in 1941.

Q. Yes. Now, in other words, you have advanced the expenditures which you would have spread over four or five years as to those cars to be made in the year 1941, and all of that is included—expense incident to that is included in [fol. 1148] making up this forecast, included for this year?

A. Such part of it as is involved in the expenses is in the forecast.

Q. Can you give approximate figures or actual figures as to the amount of extraordinary expense which you will thus advance from future years into 1941?

A. I don't believe I can answer that question.

Q. What is the total amount of the program? Do you know?

A. $765,000.

Q. $765,000. All operating expenses incident to the improvement of those cars?

A. No; there will be some betterments in there.

Q. Some little betterments. But the larger part of that is operating expenses?

A. That is correct.

Exam. Boyden: Well, was that original program over a longer period?

The Witness: It was programmed to be completed in 1945.

Exam. Boyden: When was that program drawn up?

The Witness: In 1937.

Exam. Boyden: And they propose now to do it all in 1941?

The Witness: 1941; on that certain lot of equipment.

By Mr. Anderson:

Q. And in your statement it is affected accordingly——

[fol. 1149] A. It is.

Q. By those operating expenses?

Mr. Anderson: I don't think I have any other questions——

By Mr. Anderson:

Q. Oh, there are two more statements you made there. Have you any other statements to present in accordance with my request?

A. I have.

Q. You hand me a statement entitled—the general heading—"Statement of Actual Expenditures for Road and Equipment (exclusive of retirements) November 1, 1935 to March 31, 1941."

That statement for the Denver & Rio Grande Western was made up under your direction, I take it?

A. It was.

Q. The figures were taken from your accounts?

A. Not 100 per cent, Colonel.

Q. Well, explain the statement.

A. The statement was according to classes, which is not the way it appears in the accounts.

Q. Yes?

A. The descriptions are, as we describe, the former divisions of capital expenditure classifications and not the primary accounts that appear on the books, and this particular setup was drawn off in the engineering department by form practically agreeing with the charges on our books.

[fol. 1150] Q. Now, the statement, however, of the amounts expended is correct; is it?

A. It is, substantially correct.

Q. The classification on the left hand side of the various items being made by the engineering department, but the statement of expenditures for those years for the purposes stated are correct?

A. That is correct.

Mr. Anderson: I will offer that in evidence as the next exhibit.

Exam. Boyden: Mark it Exhibit 268.

(Exhibit No. 268, Witness Thompson, marked for identification.)

By Mr. Anderson:

Q. You also hand me a statement made at my request, "The Denver & Rio Grande Western Railroad Company, Statement of Actual Expenditures for Operating Expenses

in Connection With Improvements, November 1, 1935, to March 31, 1941."

That statement was prepared under your direction?

A. It was.

Q. It is a correct statement of what it purports to be; is it?

A. It is.

Mr. Anderson: I offer it in evidence as No. 269.

Exam. Boyden: Mark it 269.

[fol. 1151] (Exhibit No. 269, Witness Thompson, marked for identification.)

By Mr. Anderson:

Q. Mr. Thompson, is it not a fact that the property purchased a very considerable amount of new equipment during the period of the trusteeship?

A. Yes.

Q. Have you got a statement of the amount of equipment so purchased?

A. I have that statement, if I may be the witness on it.

Q. Yes; you have a statement. It was intended to put that in by Mr. Bradford; wasn't it?

A. It was.

Q. And you have made—I will put if in later then. You have made no adjustments in your accounts for the benefits, if any, which have accrued from the use of this equipment or the improvement of equipment which has taken place since 1935; have you? You haven't made any allowance for that?

A. I don't believe I understand your question.

Q. I mean the increased efficiency or anything of that kind. In making up the statements as made for you, you have taken the cost as shown by your records?

A. That is correct.

Q. You haven't made any allowances for anything of that kind?

A. I have made no adjustment.

Q. I note in Exhibits 262 and 263 that hire of equipment [fol. 1152] for the years '36 and '39 were as reported and not restated to be the same as in 1940. These rentals were considerably less than in 1940, weren't they—were considerably less in 1940, weren't they, on account of the increased equipment and the increased improvement in equipment?

A. In the 1940 figures hire of equipment, net, was less than the preceding years, giving the effect of the new equipment on which per diem was earned.

Mr. Anderson: That is right. I think that is all.

Exam. Boyden: Cross examine.

Mr. Clay: I have some questions.

Exam. Boyden: Mr. Clay.

Cross-examination.

By Mr. Clay:

Q. Mr. Thompson, you testified that the trustees contemplated spending within the months ending at the end of the year $250 or $300 a car on some 1,400 cars.

A. Correct.

Q. Is that for the installation of A. & B. brakes?

A. It does not include A. & B. brakes.

Q. Well, if it were not for the defense program, would you have any need for those cars?

A. I would say not at this time, not in the complete volume.

Q. Is it not also true that any increased expense for the reconditioning of those cars will be offset by what profit you make on the increased business due to the defense pro-
[fol. 1153] gram?

A. I assume so.

Q. That work was not in the trustees' original rehabilitation program; was it?

A. It was in the program that was set up about four years ago for increasing and improving equipment. These 1,400 cars were scheduled for rehabilitation over a period of five years starting in 1941.

Q. You just testified that there would be no need for those cars except for the defense program. Certainly the trustees would not have spent the money if they couldn't use the cars; would they?

A. Well, I intended to convey the impression that in an orderly manner they would be required over a period of five years. In other words, 20 per cent of them would be required in 1941.

Q. Now, you testified that the improvement program during 1941 will increase operating expenses about a million

dollars. Will you break that down? How did you arrive at that million dollar figure?

A. I am picking that for you pretty much out of the air because I don't know what the exact figure is.

Q. Is that a figure you have arrived at since you are here in Washington, or is it a figure which the trustee has given you?

[fol. 1154] A. I made the figure right here in Washington.

Q. On what basis? And would you explain the basis of the figure?

A. I have stated it was purely an estimate and it includes the operating expenses in connection with the laying of 60 miles of rail.

Q. Well, take that one item. That is rail that you re-lay ordinarily; isn't it?

A. That is correct.

Q. That is the——

A. That is correct.

Q. Now, how much of the million dollars is due to the re-laying of 60 miles of rail?

A. Half a million dollars.

Q. That is just ordinary maintenance; isn't it?

A. Well, it is, to the extent that rail is considered ordinary maintenance. The accounting—the regulations of the Commission require that the cost of the increase weight be capitalized.

Q. Well, a half a million dollars of this cost is reflected in operating expense because of re-laying the rail?

A. That is correct.

Q. The trustees don't plan any more work on roadway, do they, of any consequence besides the re-laying of that rail?

A. Well, there is a rather extensive program of bridge [fol. 1155] work and culvert work that is under-way.

Q. Well, that is just ordinary work, isn't it, that you do ordinarily?

A. That is correct, about a normal program.

Q. Normal program. Such as you would have to do in any future year with this level of business?

A. Approximately that.

Q. Now, that accounts for a half a million dollars of it. Could you give me the basis of the—on which you estimated the remaining half a million dollars?

A. On the—I have figured in connection with that rehabilitation of 1,400 cars there would be some capital expenditures and, therefore, if it was capital you have to have authority for it and the operating expenses would be carried in connection with the improvements.

Q. That is, improvements to equipment?

A. That is correct.

Q. The remaining half a million dollars is for improvements to equipment?

A. That is correct.

Q. And the 1,400 cars. Is there anything else?

A. Offhand, I can't answer your question.

Q. Are you going to do any improvement work on locomotives such as——

A. No major jobs on locomotives, no.

[fol. 1156] Q. Any major installations of automatic stokers?

A. Just the usual program. I think there are 10 stokers scheduled for this year.

Q. That would be just normal installation?

A. Well, it would be to the extent necessary to get the program completed by the time all locomotives have to be equipped with stokers under the law.

Q. When is that date?

A. 1945, I believe.

Q. You are not going to complete your installation of automatic stokers; there will be some locomotives remaining, won't there, to be so——

A. There will be some locomotives remaining——

Q. —equipped in future years?

A. —if they are used in main line service which would have to be equipped with stokers, but they are not being used in main line service at the present time.

Q. Well, you are not equipping more locomotives than you need in connection with the estimated business you will have under the defense program?

A. All the modern locomotives come equipped with automatic stokers, and we have remaining only one class that requires automatic stokers to be operated in main line service, and that one class is not ordinarily used in main line service. We might have to use them with the influx [fol. 1157] business this fall or in 1942.

Q. If you run into a traffic peak?

A. That is correct.

Q. Now, would you be good enough to turn to your Exhibit No. 262?

Now, as I understand, what you have done on this exhibit is merely to carry out the wish expressed to you by the insurance group as to the way this exhibit would be made up. The trustees do not sponsor this——

A. They do not.

Q. —basis on which the exhibit is made up?

A. They do not.

Q. You just administerially have projected these figures in accordance with the request made of you?

A. That is right.

Q. And the same is true of exhibits 263 and 264?

A. 263—263, yes. 264 is a consolidation of 262 and 263.

. . . . . .

[fol. 1158] Is it not true that your best prospect of the increased business above the 26 million and a half gross will be from the further development of bridge traffic?

A. I think that is correct.

Q. And is it not also true that the bridge traffic is a kind of traffic that, speaking generally, will return low revenue because it is competitive with the bridge traffic that the Union Pacific and the Santa Fe carry.

A. I don't think the fact that it is competitive has anything to do with the revenue. The rates on a ton-mile basis on long-haul traffic are naturally lower than on short-haul traffic.

. . . . . .

[fol. 1159] WITNESS R. K. BRADFORD

By Mr. Anderson:

Q. Will you please give your name and position, where you live, and position with the Denver & Rio Grande Western Railroad or trustees thereof?

A. R. K. Bradford; residence, Denver, Colorado; assistant general manager of the Denver & Rio Grande Western.

Q. How long have you been connected with the Denver, Mr. Bradford?

A. Since August, 1923, with the exception of one year when I was loaned to the RFC.

Q. You have been in the railroad business practically all of your business life; haven't you?

A. Yes, sir; all of my business life, since 1913.

Q. I asked the trustees of the Denver to supply a witness and they suggested you as a probable witness to testify to certain specific matters which we felt might be helpful in this case in arriving at reorganization, and I will ask you as to the questions which I submitted to them and get you to answer them in your own way.

First, I will ask you if you have a statement showing the principal items of new equipment acquired by the Denver from November 1, 1935, to December 31, 1940?

A. I have.

Q. Is the statement which I hold in my hand the one to which you refer?

A. Yes, sir.

[fol. 1160] Q. That does not purport to show, I take it, all of the equipment acquired, but it does show the principal items acquired?

A. Well, it shows the principal items up to December 31, 1940. There have been other items acquired since that time, though.

Q. Well, now, will you state what have been acquired since then or what is on order at this time?

A. There has been acquired since December 31st, 1940, 500 additional boxcars, the same type and capacity of the 900 acquired prior to December 31st, 1940. There has been ordered 14 Diesel switching engines the delivery of which will start this week. There has been ordered and received one Diesel switching engine which at the present time is being used two-thirds of each 24 hours by the Rio Grande and one-third in the so called Associated Railway Service protecting the Remington Arms plant at Denver. The engine is in the service of the Rio Grande, Santa Fe, Burlington, C. & S. and Rock Island. Authority has been given and material has been ordered for the rebuilding of 100 additional stock cars, for the building of 10 additional cabooses. Authority has been given and the court is being petitioned for authority to build or buy 100 flat cars to replace flat cars that have been worn out. Five

additional 4664 Mallet locomotives similar to our 3700 series that were bought in 1938 have been ordered and will be delivered, we are promised, in October. Three 5400 horsepower Diesels have been ordered, and we are promised [fol.1161] delivery in January and February, 1942. That will take care of all of the equipment which has been purchased since 1940 or which has been authorized since that time.

Q. Since November 1, 1935?

A. Yes, sir.

Q. In other words, taking this statement which you hand me entitled "Principal Items of New Equipment Acquired, November 1, 1935-December 31, 1940," and adding the equipment which you have enumerated in your testimony would give the principal items of equipment acquired by the railroad from the beginning of the trustee—acquired or ordered by the railroad from the beginning of the trusteeship down to the present time?

A. That is correct, sir.

Mr. Anderson: I will offer that in evidence as Exhibit No. 270, I think it is.

Exam. Boyden: Mark it Exhibit 270.

(Exhibit No. 270, Witness Bradford, marked for identification.)

Exam. Boyden: Are you able to give us any information about how much of this equipment has been paid for and how it was acquired, whether by equipment trusts or otherwise?

The Witness: All of the so called purchase items, with the exception of the seven tank cars and, I believe, the 14 units of work equipment, were acquired on equipment trust. [fol. 1162] The seven tank cars are actually tank cars that we bought as individual cars, second hand or that were damaged or something, and converted into water cars.

Exam. Boyden: Those have been paid for?

The Witness: Those have been paid for. The converted cars all were taken care of out of current expenses. The built cars, that is, the 300 stock cars, the 20 cabooses, the passenger and automobile cars were all built or rebuilt in our shops and paid for currently.

Exam. Boyden: Did you include the rebuilt cars in that?

The Witness: Yes, sir. The rebuilt passenger cars and

the rebuilt 78 automobile cars were taken care of out of our current expenses.

Exam. Boyden: And also the built cars?

The Witness: Yes, sir.

Exam. Boyden: Pardon me. How about the other equipment that you mentioned that has been ordered?

The Witness: Well, the one Diesel that is used in the so-called Associated Railroad Trade at the present time is being handled on the lease purchase agreement that we have suggested to the other railroads, because there are five more or less involved, that we all pay cash for it and then adjust the ownership after the Remington plant is credited up.

Exam. Boyden: Have there been any payments made on that?

The Witness: Yes, sir; February, March and April. [fol. 1163] Exam. Boyden: What are the monthly payments?

The Witness: $877.50, sir, in principal, and the interest starts at about $75 a month and decreases each month.

Exam. Boyden: What is the total cost of that?

The Witness: $78,000.

Now, the 14 Diesel switch engines, one of them being purchased from the General Electric Company; that is a small 380-horsepower Diesel, we will pay cash for that. Of the 13, there *is* nine 360-horsepower being purchased from the Baldwin Locomotive Works; four 100-horsepower being purchased from the American Locomotive Works, and those we will pay 25 per cent cash and the balance over 90 months, I think.

Exam. Boyden: And what is the total cost of the 14 units?

The Witness: Well, I will have to do a little adding here. We will have $675,000 in that equipment trust on those 13 units. The 380-horsepower cost us $36,000 and will cost us $200 or $300 to get out to us.

Exam. Boyden: That is for each of them?

The Witness: That is for the one that we are buying cash from the General Electric. The 660-horsepower cost us $68,500 f.o.b. factory, and the others $78,000 f.o.b. factory. There are four of the 1,000-horsepower; nine 660-horsepower. Those are being paid for 25 per cent cash and the balance spread over 90 months payment. The new [fol. 1164] steam locomotives which will be delivered in October and the three Diesel electric freight locomotives

which will be January and February delivery are all going to be handled on an equipment trust. I can't tell you exactly what will be paid down and how that will be spread. It will be probably on a mixed sale.

Exam. Boyden: What is the total cost?

The Witness: The Diesel locomotives will cost us $500,000 apiece, or $1,500,000, and the other locomotives will cost us $232,000 apiece, or $1,160,000. That is f.o.b. the plant. It will cost us something to get them out there.

By Mr. Anderson:

Q. You have got about $4,000,000 of equipment on order now, in round numbers?

A. Yes, sir.

Q. Now, Mr. Bradford, I asked that you be prepared to testify to the improvement work which has been done by the bankruptcy trustees during the trusteeship of the Denver. First, the amount of money spent. That statement of the amount of money spent was put in by Mr. Thompson this morning, I think; wasn't it?

A. Yes, sir.

Q. As one of the exhibits. Now, can you describe generally the character of the improvement and where it is done and make any statement on that subject that you think will be helpful in arriving at what has been done by the [fol. 1165] trustees in the improvement and development of this property, generally?

A. Of the approximately $17,000,000 that has been spent in improvements and charged to road and equipment in the period January 1 to March 31, 1940, approximately $9,000,000 covers new locomotives and freight cars. There is another million and a quarter that has been expended in improvements to existing locomotives, that is, locomotives that the trustees found on the property, locomotives and cars. The next biggest item is in rail and other track materials on which we have spent approximately a million and three-quarters dollars and approximately a million dollars on bridges.

At additional yards and sidings there have been about $900,000 spent. Practically speaking, all of that expenditure has taken place on the line between Denver and Ogden via the tunnel and via the gorge. In other words, the greater proportion of this money has been spent for equipment or

power, for rail or bridges, ballast, yard improvements, shop facilities, and improvements on the main line of the railroad. There have been some improvements on the back lines, of course, by reason of rail being shoved back on those territories, but primarily the expenditure has been concentrated on the main line railroad.

Q. That statement shows the amount spent on roadway and structures as well as on the other items you have men-
[fol. 1166] tioned; doesn't it?

A. Yes, sir.

Q. The total amount?

A. $7,666,756 in roadway and structures. $9,837,490 R. & E. on equipment.

Q. This, of course, does not include any operating charges or betterments——

A. No, sir.

Q. —in either roadway and structure or equipment?

A. The operating expenses on roadway and structure have been $4,930,636; done on equipment, $481,169.

Q. That is, you are referring in giving the figures to Exhibits 268 and 269 introduced by Mr. Thompson?

A. Yes, sir.

Q. They appear on those papers?

A. Yes, sir.

Q. Now, give us the general condition of this property or any principal changes, improvements, that have been made under the present general condition both for roadway and equipment.

A. As to roadway the property is in splendid condition. There still remains, of course, the normal program of rail renewals that will continue—should continue each year as the railroad is operated. Our ballast program is very well up to date and our maintenance of way deferment, if
[fol. 1167] there was any, has been entirely picked up. The railroad is, in my opinion, in very good shape. As to maintenance of equipment, any deferment that may have existed on our power has been picked up. There still exists, in the opinion of our mechanical officer, some deferment on cars. Approximately half of that deferment will be picked up this year and that will leave approximately $750,000 which we expect to pick up in 1942 and 1943.

In the process of this program we will have eliminated approximately 2,500 units of equipment, equipment which,

by reason of our business, is no longer needed and we are not replacing. In replacing units, however, we are increasing the capacity of those units so that we will still have, from the standpoint of cubical capacity or carrying capacity approximately the same amount of equipment that we started out with in 1938 when we made our equipment survey. The railroad is well equipped now as to yards. We have in mind five additional small Diesel switchers which we probably will purchase within the next year or so, but if our experience follows the other railroads those, of course, will pay for themselves in the savings that we are able to accomplish.

We will need 500 boxcars some time between now and 1945. Those boxcars will be needed to replace older equipment, and it is entirely possible that we may decide to take advantage of the opening that we have now to purchase [fol. 1168] them because if we do we can make some saving in our maintenance of equipment by discontinuing some heavy maintenance on cars that we have been keeping in service.

So far as our road equipment, road power, is concerned, I don't believe that we will need any additional road power for some time unless we have a much bigger increase of business than we can now forsee. We will have, after this year, completed all of the signalling of our main line with the exception of the Denver-Pueblo territory where we have got a double track railroad and probably won't signal for a good many years, and a little piece of territory between Ogden and Salt Lake. We still have some territory between Grand Junction and Dotsero where we are equipping the C. T. C. and where we have a program that will take us a couple of years more to tie together the two pieces.

Q. That C. T. C. greatly increases the capacity of the line: doesn't it?

A. Very much so, yes, sir.

Q. What percentage, would you say?

A. My own opinion is that track equipped with proper passing tracks and centralized traffic control has about one hundred—well, about 70 per cent of capacity of double track. In other words, I think——

Q. In other words, it is equivalent to 70 per cent to what you have carried for double track?

[fol. 1169] A. Yes, sir.

Q. Additional business?

A. Yes, sir.

Q. Now, going back for a minute before you go on, the equipment that you spoke of as being on order costing approximately $4,000,000 for this year is not included in those statements, 268, and 269 to which you referred; is it?

A. No, sir.

Q. That equipment is in addition to the expenditures that have been set forth in statements 268 and 269?

A. That is correct.

Q. Which would bring it up to something around 21,000,000 if that were included?

A. Yes, sir.

Q. And that is all charged to capital, of course, as new equipment?

A. That is true.

Q. And issued as you have stated.

Now, you spoke of accelerating the improvment of certain older cars. Would you make that a little clearer and, if you can say so, what it will increase the expense in 1940 over what the regular schedule which runs over a number of years would be?

A. Well, we had 1,447 boxcars, 40,000—or 40-ton capacity, 40-foot cars in our series 66,000, 67,000. Our plan [fol. 1170] our equipment forecast indicated that those cars would probably start taking themselves out of service, from an economic standpoint, about 1950 to 1952 or 3. Our older cars are 40-ton 36-foot cars and are much older, and they were costing a great deal of money to maintain. They are taking themselves out of service pretty rapidly now. Rather than buy new cars to put in coal or concentrate bullion and rough trade, we took our 66,000 and 67,000 series cars which up to that time had been our Class A cars and worked out a program of strengthening them to throw them into the so called rough trade, and it is costing about $405 a car.

We had planned to do that over a period of four to five years but further decided, in view of the situation and the demand for equipment, that we should expedite that program, and that calls for an expenditure of approximately $580,000.

Q. Which you had not contemplated spending——

A. We had contemplated, say, a fifth of that this year, Mr. Anderson, about $125,000 this year, so that we are

throwing into 1941 $400,000 to $450,000 deferment that we expected to make up in '42, '43 and '44 and '45.

Q. I see. And that additional expense is carried into your forecast for this year which Mr. Thompson has testified to?

A. Yes, sir.

Q. And affects your earning statements accordingly?

A. That is correct.

[fol. 1171] Q. Now, is it not a fact that your present ownership of the cars—you have spoken of power as being adequate for the future needs—is equal to or in excess of the total ownership of cars in the country established by the AAR in its formula, regardless whether the formula is good or bad that is a fact; isn't it?

A. That is a fact. If you take the formula and correct it to this extent, they left off a few little items, and then they had a 6 per cent bad order, and our bad order has been less than 3 per cent for some time so, giving that consideration, we have an excess ownership according to their formula, whether it is good or bad.

Q. Of the proportion of cars that should be allotted to each railroad in the United States?

A. That is correct.

Q. Mr. Bradford, you have said that, so far as roadway and structures are concerned, your property is now in good condition. I take it from that that your improvement program, so far as roadway and structures are concerned is about completed. Am I right on that?

A. The big items. We will continue, of course, to have each year an improvement program and maintenance of way and structures.

Q. Of course.

A. We will have 60 miles of rail each year; we will have [fol. 1172] bridges and things like that, but our 1941 forecast of our 1940 expenditure, for that matter, somewhere around those items, can be taken for our future maintenance of way and structure, sir.

Q. In other words, you regard the program set up by the trustees at the beginning of the trusteeship in 1938 for extraordinary improvements, if I may call it that, as completed and you now have your normal A & B expenditures as every railroad has; is that right?

A. That is right, so far as maintenance of way and equipment is concerned.

Q. So far as your equipment is concerned, when you have acquired these new additional engines and cars which you have indicated, your equipment, not only by the AAR standard, but in your opinion also is adequate now? Isn't that the situation when you finish these 1,400 cars?

A. As I stated, some time between now and the next two or three years we ought to buy 500 additional boxcars. We also between now and the next three or four years will probably buy 500 additional coal cars which will take the place of about 1,100 miscellaneous coal cars, but if our figures are correct as to the cost of maintaining those 1,100 cars, the 500 additional boxcars can be adequately serviced by the saving that we will make in maintenance of equipment expenditures.

[fol. 1173] Q. Yes. And your equipment depreciation is now in excess of your equipment maturities?

A. Yes, sir.

Q. And your depreciation on this additional equipment, if you bought it, would provide for the necessary equipment maturities, generally speaking?

If you bought the additional equipment you mentioned, the savings which you would effect in the future would substantially take care of the additional capital charge there involved, the equipment having been bought on equipment trust?

A. Yes, but we are trying to purchase this new equipment on this basis: You must cut your maintenance expenditures enough to pay for these new cars.

Q. In other words, retiring those old cars and buying new cars would pay for the new cars?

A. Yes.

Q. Now, taking that railroad in that shape, the fine shape which you have indicated, have you been able to accelerate your schedules and improve your operating conditions to a material extent and, if so, will you indicate to the Examiner generally the result of those expenditures?

A. Well, there has been, of course, material improvement and acceleration of schedules in the past number of years, and by reason of these improvements it is easier for us to meet the competitive schedules now than it was some years [fol. 1174] ago. That has resulted from improvements to roadway and structures and also from this new power that we have been purchasing. We have a railroad now that is capable of taking care of a great deal of business, taking

care of it adequately. I can't tell you how much more or I can't tell you what directions it might come from or in what months, but I do know from my own practical knowledge of the railroad that we could take care of a great deal of business and much better than we could have taken care of it 5 or 6 years ago.

Q. Now, let me ask you a few specific questions. To start with, with your improvement in your track structure and your rail, ballast, heavier rail and other things that are shown in the annual reports—you need not go into detail—you have better operating conditions, so far as your physical structure is concerned; haven't you?

A. Yes, sir.

Q. And with train control, traffic control, and other improvements such as signalling, and so forth, you can operate your trains at higher speed, both freight and passenger; can't you?

A. That is correct.

Q. And you are doing that?

A. Yes, sir.

Q. You also with your new equipment, which is a higher capacity, an improved structure, as all new equipment is [fol. 1175] over old equipment, you can make better schedules, carry more business, with less units of equipment; can't you?

A. Yes, sir.

Q. Therefore, the entire operating condition which confronts the railroad today, from your view, as I take it, is very superior to what it was in 1937, for instance; is that correct?

A. That is correct, and that it will be further improved when we get this equipment that is now on order.

Q. Get what is now on order?

A. Yes.

Q. The necessary result of that is that it makes a permanent improvement in unit cost of handling the business, assuming that the general cost, labor, and so forth remains the same; doesn't it?

A. Yes, sir, it will, if we can hold what we have, which should be something.

Q. Now, you spent, according to your statement—will have spent, outside of charge to operating expenses through betterments, you will have spent, including this year, some-

thing over $24,000,000 on this property since 1935, November 1st? I will ask you whether, in your opinion and your familiarity with properties, the improvement in operating conditions, the deduction of expense and other benefits accruing from those expenditures, will provide a good return [fol. 1176] upon the investment which you have made in them?

A. Well, that is a pretty difficult question to ask because a lot of this stuff can be——

Q. If you can't answer it, then why did you make the expenditures?

A. We have to make some expenditures from the standpoint of safety. Now, it depends entirely upon how you want to capitalize safety.

Exam. Boyden: You have to make expenditures to keep up with the trend of the times and to handle the traffic you now handle; don't you?

The Witness: That is right, and we have to make some expenditures to comply with rules and regulations of law, some of which we do not agree with, but the biggest expenditure made on our railroad was for power, and the power will pay for itself. The cars, to a certain extent, will pay for themselves, I mean will return to us in savings in cost a certain amount of their cost.

For example, these 500 boxcars we are considering now have a protection, not as a return, but we will get $60,000 a year by return in reduction of cost of maintaining older cars that they will take the place of. Now, we can maintain the older cars through operating expenses and take care of the same amount of business, but I can't tell you that this $17,000,000 odd actually made us a return because [fol. 1177] so much of it is hard to put down, from a standpoint of saving. I know that good ballasted track will reflect a credit back to your maintenance expense. I can't tell you how much.

Q. No, you can't, but you can approximate the savings that result from ballast in maintenance expenditures. You have got, say, to equip your roadway with tools; haven't you?

A. Yes, sir.

Q. And they are very economical; are they not?

A. Yes, sir. I think that we are getting the effect of that economy in our maintenance of way. I would say this,

from a practical standpoint, that you take 1940, the performance of 1940 will be somewhat—should be somewhat improved in the coming year.

Q. What would you say your maintenance of way will be in the coming years, looking ahead?

A. Well, if we have somewhere between twenty-five and twenty-eight million, our maintenance of way should be around three million, $3,200,000. Our maintenance of equipment expenditures have been estimated normally, after we take care of this deferment at—excluding depreciation, say, $4,188,000. Now, you have got to add from $1,400,000 up for your depreciation, depending upon what you have.

Q. Yes, but that isn't an expense in the usual sense. You pay off capital.

A. Well, it charges in our operating expense for that. [fol. 1178] Q. Yes.

A. Then we will always have some operating expenses in connection with improvements and retirements, so that I will say if you take on that situation—and this ought to come after 1943—that you have $4,100,000 or $4,200,000 ordinary maintenance to which you would add your depreciation which, at that time, will probably be a million dollars four and a quarter and, say, $50,000 to $100,000 for operating expense in connection with additions and betterments.

Q. That is on equipment?

A. On equipment, yes, sir. Our transportation ratio depends a great deal on when we get the business, where we get it, our expenses, and labor. I think our transportation ratio for 1940 was a pretty good check. There was nothing in maintenance of way and nothing in maintenance of equipment that will add much to that for succeeding years.

Q. And I believe you have said already—if you haven't, I want to make it clear—that these improvements and when you get the equipment you have ordered, develop the capacity of your properties to handle business, additional business will be very greatly increased; am I right in that?

A. Yes, sir.

Q. You say that so far as your central traffic control is concerned, you say that increases the capacity of the track, in your judgment, about 70 per cent and that the other [fol. 1179] facilities which have been provided and new power which has been provided greatly increase the capacity

of the property to handle increased business and to handle it at better speeds and at lower costs, unit costs. Am I right in that summary?

A. That is correct, sir.

. . . . . .

[fol. 1180] WITNESS R. K. BRADFORD.

A. I think that the exhibits that are made up by Mr. Thompson, as I stated, are mathematically correct. As to the value of them, they might be considered more valuable to one person than they would be to another. I think it is as good a horseback estimate as you can make of what happened in 1940 and what might have happened in previous years had the same conditions existed in previous years as existed in 1940.

Q. Did the same conditions exist in previous years as they did in 1940?

A. By his mathematics he has made the same conditions exist in previous years, to a large extent. You can't mathematically fool with the weather or anything like that.

Q. Let us examine that. Do you think 1940 was a good year to take as a test year or to compare the unit costs of these two railroads?

A. 1940 was the best year up to that time from the start of the trusteeship.

Q. Best year for what?

A. Best year for the railroad.

Exam. Boyden: Best year for the results of the railroad?

By Mr. Clay:

Q. You mean for the Denver & Rio Grande Western?

[fol. 1181] A. Yes; that is what I am talking about.

Q. But not the best year for the Denver & Salt Lake?

A. Oh, no, not the best year for the Denver & Salt Lake, but the question that Mr. Thompson was asked was to take the costs in 1940 that resulted from the various expenditures made by the trustees in their procurement programs and to project them back over the previous years to determine what may have happened during the previous years, had those adjustments been in effect during the previous years.

I think that gives you a pretty fair estimate of what might have happened.

Q. Mr. Thompson introduced as Exhibit 260 the annual report of the Denver & Rio Grande Western for the year 1940. I turn to page 11 of that exhibit and ask you to look at the figures on that page and tell me whether the maintenance of way and structures in 1940 was greater or less than in 1939.

A. Maintenance of way and structures was less than in 1939.

Q. By how much, roughly?

A. $290,049.33.

Q. Now, how about the other maintenance item there just below that?

A. Maintenance of equipment was less than in 1939 by $27,771.31.

Q. So 1940 certainly was a better year to take, wasn't it, [fol. 1182] in the case of the Denver & Rio Grande Western than 1939?

A. Yes; I said it was the best year in the last five or six years to take.

Q. I agree with you, but now look at Exhibit 261 at page 10. I will ask you to look at the figures on that page and read me the maintenance of way and structures figures, the maintenance of equipment figures for '40 and '39, respectively, in the case of the Denver & Salt Lake.

A. Maintenance of way and structures was $381,807.92; or an increase of $32,203. Maintenance of equipment was $531,289.30, or an increase of $42,098.72.

Q. All right. Now, am I right in saying that in 1940 these maintenance items were less than in 1939 on the Denver & Rio Grande Western but more than in 1939 on the Denver & Salt Lake?

A. That is correct.

Q. Now, if you will turn to page 15 of the same exhibit, you will see a column headed "Retirements and Adjustments" on the Denver & Salt Lake. Weren't those larger retirements and adjustments in connection with the main line, that is, the Dotsero cut-off line?

A. I don't know, Mr. Clay. I haven't in mind or available the breakdown of those returns and adjustments.

Q. Well, you testified on power, the increases in power equipment this morning. Did I understand you correctly to [fol. 1183] say that the heavier power on the through route over the cut-off was put into operation in the fall of '39?

A. The heavier power over the cut-off—that is, the heavier Rio Grande power—when we opened up over there we opened up with Mallet Power, but the heaviest Mallet Power that we owned was put over there in the spring of '39.

Q. The spring of '39?

A. Yes.

Q. Now, was it possible to use that heavier power over the Dotsero cut-off efficiently without doing considerable track alignments and track improvements?

A. The work necessary for the heavier power on the Denver & Salt Lake consisted of some new rail and some ballast and some bridge strengthening.

Q. So a heavier power could be used——

A. That is correct.

Q. —on that line?

Now, that heavier power was power owned, bought and used by the Denver & Rio Grande Western; wasn't it?

A. Yes, sir.

Q. If the Dotsero cut-off had never been built it would never have been necessary, unless the Denver & Salt Lake bought locomotives similarly heavy, to have spent that money, would it, on the track alignments?

A. Depends on what you consider necessary. I, per- [fol. 1184] sonally, consider that the Denver & Salt Lake, regardless of the Denver & Rio Grande's interest, might have made some money by putting their track in a little better shape over there so that they themselves with their heavy power could have moved better.

Q. They did make money under the Freemen management?

A. Yes, they made some money.

Q. And the cutoff, I believe, was opened in '34; was it not.

A. Yes; '34 is right. June 15.

Q. And all the money which has been spent by the Denver & Salt Lake management on the improvement program has been on that through route; hasn't it?

A. No, sir.

Q. Well, the——

A. There has been considerable money spent west of Orestod in the way of laying rail, some ballast, some ditching, some line revisions, small ones, building up rail ends, ties, bridges.

Q. Just take the year 1940. You heard Mr. Thompson testify that there was about $200,000 spent on, I think it was, automatic train control, was it? Telephones?

A. No.

Q. What was it?

A. In the year 1940 on the Denver & Salt Lake there was about $339,000 spent on additions and betterments.

[fol. 1185] Q. Yes, sir.

A. The two big items in that year were automatic block signals and a new coaling station and layout at Sulphur. The complete program as to block signals on the Denver & Salt Lake will approximate $200,000, but some of that slopped over or worked over into '41.

Q. Well, all the block signals were put on the main route, weren't they, the cut-off?

A. The block signals were put between Denver—between Prospect and Denver and West Portal.

Q. The coaling station was on the main route; wasn't it?

A. Yes, sir; Sulphur.

Q. Now, when this block signaling project is complete, won't the Dotsero cut-off route be completely block-signaled from Denver to Bond?

A. The cut-off will be block signaled this year from Dotsero to Orestod, and that will leave the territory from West Portal to Orestod, a distance of approximately 60—about 69 miles yet to be signaled.

Q. But all the rest will be block-signaled?

A. The territory is now block-signaled between Fox Junction and Denver and West Portal, and the cut-off between Dotsero and Orestod will be signaled this year.

Q. Of course, these expenses have been reflected in the Denver & Salt Lake but they have contributed very sub-

[fol. 1186] stantially in the reduction of the unit cost of the Denver & Rio Grande Western?

A. The block signals reflect very little in the operating expenditures of the Denver & Salt Lake because primarily they are road and equipment, that is, they are capital charges, and the contribution to the economical operation from block signals is a question of opinion, somewhat questionable. I think it makes a very much safer railroad, and I have always felt that you get a little faster movement in a railroad like that, particularly that is protected by block signals, because the men feel safer, but I would hate to put down in money what block signaling saves you.

Q. The track alignments plus the block signals and the other improvements have certainly increased the transportation of the line; haven't they?

A. Yes, sir; materially.

Q. And enabled a larger portion of bridge traffic to be hauled over the Denver & Rio Grande Western over the cut-off route?

A. Yes; the Denver & Rio Grande Western handles a great deal of bridge traffic over there.

Q. Isn't it true that the unit cost for the bridge traffic of the Denver & Rio Grande Western is less than the unit cost for the non-through traffic, by reason of the improvement on the main line, the $20,000,000 which has been spent [fol. 1187] largely in heavier power there on the main routes?

A. That the unit cost on the main line is less than the unit cost on the non-main line?

Q. On the system.

A. Yes; that is correct. The unit cost for the main line is less than the unit cost for the system.

Q. And it would seem obvious, wouldn't it, Mr. Bradford, that this money that the Denver & Salt Lake has spent in improving its main line has, therefore, contributed to the reduction in the unit cost of the Denver & Rio Grande operation with respect to the through traffic?

A. Yes, I think there has been some contribution in that expense.

Q. Now, do you know what Mr. Thompson's two exhibits were introduced to prove or what was the purpose of introducing them?

A. What two exhibits?

Q. The exhibits 262 and 263 which restate the costs for '36 to '39, inclusive, on the basis of the unit cost for 1940.

A. No, I don't know what they had in mind proving by them when they asked us to make them up, no, sir.

Q. Now, I am going to ask you a few more questions to develop whether they can be depended on to prove anything. I hand you an exhibit, No. 260, page 24, and refer you to the figures for 1940 for freight and passenger train miles, [fol. 1188] the passenger train miles being 2,000,000 some odd miles and the freight train miles three and a half million. By merely using a pencil, I think you will find that the passenger miles will approximate 20/55 of the total of

passenger and freight train miles, or, in other words, 4/11 of the total train miles, which is approximately 36½ per cent of the total train miles which are passenger. If you will bear that figure in mind a moment, and then turn to Exhibit 261 which shows the train miles for the Denver & Salt Lake, will you look at the figures under 1940 and tell me whether it is approximately correct to say that about 30 per cent of the total of the train miles is passenger——

A. What page is that, Mr. ——

Q. That is page 22.

—is passenger train miles in the case of the Denver & Salt Lake? That is, you break down the mixed train miles.

A. The figures show this: That freight train miles on the Denver & Salt Lake are 211,000. Mixed train miles, 168,000. Passenger train miles, 171,000.

Q. Well, we wouldn't be far wrong, would we, if, by breaking down the mixed train miles, we venture to say that perhaps 50 per cent of the mileage in the case of the Denver & Salt Lake is passenger miles?

A. Yes, I think you would, Mr. Clay.

Q. What would you say it would be?

[fol. 1189] A. That would mean that you have to breakdown the mixed train mileage and charge about 65 per cent altogether to passenger.

Q. Would you say 45 per cent would be nearer?

A. No, so far as passenger is concerned on the mixed train, it is more or less incidental. Mixed train was primarily put on to handle overnight merchandise and so called fast business on the Denver & Salt Lake that was giving way to trucks.

Now, incidentally, they stuck on the hind end a baggage car and a combination coach with four sections on it for a little sleeping service, but the revenue for the passenger train is pretty light.

Q. I am not talking about passenger revenue. I am talking about passenger miles.

A. That is some way to split mileage with some relation to what the passenger is put on for.

Q. What would you say? Would you say 45 per cent instead of 50 per cent?

A. No. From the work that is being done, I would say that about 90 per cent of it ought to be charged to freight and about 10 per cent to passenger.

Q. Let us see if they do that. 10 per cent of the 178,000 would be, roughly, 17,000, wouldn't it, and that 17,000 would be added to the 171,000, which would produce 188,000. Would you take your pencil and see what percentage [fol. 1190] 188,000 is of the total train miles?

A. About 30.

Q. Your estimate, without figuring it out, would be around 30 per cent?

A. Yes, sir.

Q. Now, to come back to this formula of the Commission's for segregating freight and passenger expense, wasn't that really—does it afford a basis of comparing the freight and passenger on the same railroad as between different years? Would you agree with my statement?

A. Why, if you take the different years and split them up on the same arbitrary basis, yes, sir, it would give you a comparison on the same railroad.

Q. It is a basis of comparison as between different years on the same railroad?

A. That is right.

Q. But would you say it affords a basis of comparison as between the same year on different railroads?

A. No, sir, I would not, because there is so much that you have got to know about any passenger service on any railroad that you can't compare passenger revenue or passenger train miles on railroad A with that on railroad B by any formula such as that.

The Denver & Salt Lake has got one straight passenger train a day which runs from Denver to Craig and back. It [fol. 1191] performs a necessary service. It is not kept on there because it is making anybody a lot of money. It is just swapping dollars.

Q. Now, it is, of course, true, isn't it, that the less the proportion of total expense that you assign to passenger expense, the greater will be the unit cost for freight expense?

A. That is correct, if you take the arbitrary division between freight and passenger and reduce that to passenger you will have an increased charge toward your freight.

Q. And, conversely, the greater the proportion of total expense which you assign to passenger expense the lower will be your unit cost for freight expense?

A. Correct.

Q. Well, let us see how that works out in the case of these two railroads. I hand you Exhibits 262 and 263. Look at the year 1940 alone. Is it not, roughly, true that on this exhibit one-fifth of the cost of—one-fifth of the total expense is assigned to passenger expense?

A. That is about right, yes, sir, on the D. & R. G.

Q. Yes.

A. Yes.

Q. I believe you stated I was approximately correct in my statement a while ago, based on figures on page 24 of Exhibit 260, that 36½ per cent of the passenger miles of the Denver & Rio Grande Western—no; 36½ per cent of the [fol. 1192] total miles are passenger miles?

A. That is correct.

Q. So that in the case of the Denver & Rio Grande Western you assign to 36½ per cent of the total mileage one-fifth of the cost?

A. Under that method of figuring, yes, sir.

Q. Now, in the case of the Denver & Salt Lake, which is shown on Exhibit 263, roughly, what percentage of the total expense is assigned to passenger expense for the year 1940?

A. About 15.

Q. The passenger operating expense is $232,000; isn't it?

A. That is right.

Q. And the freight operating expense is three million——

A. No.

Q. Is one million, five?

A. The total is $1,782,000.

Q. About one-seventh; isn't it?

A. About 15 per cent.

Q. You would say 15 per cent?

A. Yes, sir.

Q. In other words, Exhibit 263 assigns 15 per cent of the total expense to passenger expense, though, as you testified a while ago, 30 per cent of the total mileage of the Denver & Salt Lake is passenger mileage?

A. That is correct.

[fol. 1193] Q. Now, on the basis of those figures is there any real basis of comparison between the way the freight and passenger expense is allocated on Exhibit 262 and the way it is allocated on Exhibit 263?

A. Not on your theory, but your theory, Mr. Clay, would mean that a passenger mile and a freight mile cost the same, so that the expense ought to fall in proportion to

the mileage, and that isn't at all correct. The freight miles cost more mile for mile than your passenger in direct operating expenses.

Q. I certainly didn't mean that.

A. So you can't take any of those figures and split them on a mileage basis and say, because it is 50 per cent passenger and 50 per cent freight, that the expenses ought to be split fifty-fifty, because it won't work that way. Wages are higher; fuel is higher on freight than it is passenger.

Q. Well, I am not interested so much in illustration as in the correctness of the principle.

A. Regardless of what I may think of how those schedules are made, I think that exhibit was made up with a great deal more care and with more thought of getting a proper proportion than we have got here just bantering these train miles back and forth between ourselves. I may not agree with some of the Commission's allocations, but——

Q. You testified you didn't agree that you thought it was [fol. 1194] arbitrary.

A. I didn't mean "arbitrary" in the way you considered it.

Q. That is the method used.

A. I say "arbitrary" because there is an arbitrary division between freight and passenger, an arbitrary expense not with relation to certain work, for example, but with regard to certain stations. They charge 25 per cent passenger and 75 per cent freight. Now, naturally, you couldn't go through every station and make a study of it to see exactly what proportion is chargeable to each.

When I used the word "arbitrary" that is what I meant. I didn't mean to the extent that they had made their division without any thought and just jumped out on the end of the plank and said, "Here it is."

Q. Now, I think you figured on the basis of Exhibit 263 fifteen per cent of the total expense was charged to passenger business.

A. Yes, sir.

Q. Don't you think that is low for the Denver & Salt Lake?

A. No. As a matter of fact, I think it is high, because I approach a train and a situation on the Denver & Salt Lake in this way: We have charged to that passenger train $232,781. Now, if we took off the passenger train, how

much could we save? We know that we would lose so much passenger, so much mail and a little amount of express. [fol. 1195] If we took off the passenger train we certainly couldn't save $232,781, because I figured it out. We could save about 62 cents a train mile by taking off that expense, and we are getting in about 63 or 64.

Now, that doesn't compensate you for any of the wear, if you please; of your plant, but to that extent on the Denver & Salt Lake I think we are charging too much to passenger. I think we are on the Denver & Rio Grande, but that is only my opinion. They are both made exactly in accordance with formulas that have been worked out over a number of years. In my opinion of that, we charge too much to passenger and not enough for freight.

Mr. Anderson: In accordance with the formula in use for a number of years, you mean the ICC formula?

The Witness: Yes.

Mr. Anderson: All right.

By Mr. Clay:

Q. Now, are you testifying as to the power that the Denver & Rio Grande Western has?

A. Yes, sir.

Q. With that existing power, of course, you estimate you can handle the amount of business you are now handling?

A. Yes, sir.

Q. What do you estimate will be the gross business of the Denver & Rio Grande Western for 1941?

A. $28,000,000.

[fol. 1196] Q. $28,000,000?

A. Yes, sir.

Q. Now, if, due to the expansion of the defense program, it should get up thirty million, do you think you could handle it with the present power without increasing the operating costs?

A. No, sir.

Q. Your would have to bring out into operation a lot of these old style locomotives; wouldn't you?

A. Any increased business will increase your operating costs unless you are pretty lucky getting somewhere where you have got a half train or something like that. It doesn't work that way.

Q. What was your gross in 1940?

A. $26,200,000, approximately.

Q. And you estimated gross in 1941 of——

A. $28,000,000.

Q. —$28,000,000?

A. Yes, sir.

Q. Do you think you can handle the $28,000,000 this year on as low a unit cost as your $26,200,000 in 1940?

A. Yes, sir.

Q. But you couldn't handle thirty million on the same unit cost, on as low a unit cost, as you handled the $26,200,000 in 1940?

[fol. 1197] A. I would say that, coming in the proportions in the same months in the same directions and the same bad breaks that we always get, that if we got $30,000,000 this year with our present power, that we would have to put some of our smaller engines on the main line and there might be a slight increase in our transportation cost unit.

Q. Now, what was the gross on the Salt Lake in 1940?

A. $2,363,000.

Q. What do you estimate will be the gross in 1941?

A. Have you got that forecast here handy? I can dig it out. I don't remember it. $2,255,000, approximately the same.

Q. Now, would you say that you could handle a three million gross on the Salt Lake with the present power and coming at the same periods and moving in the same directions, without increasing the unit cost?

A. I think we could. We handled $2,856,000 in 1936 on the Denver & Salt Lake and another $140,000 spread over the peak months. I don't believe it bothered us particularly.

Q. I believe Mr. Thompson testified that the Salt Lake could handle four million gross without increasing the unit costs. Do you agree with that?

A. I did not understand his testimony that way. No, I don't. I don't believe the Salt Lake could handle four million gross with their present power without increasing their cost, unless it all was westbound. Where they are now [fol. 1198] hauling empties, if they could get the gross in that direction they could do a great job, but chances are it will be all eastbound if they get it.

Q. Isn't most of the oil shipped on the Salt Lake all westbound?

A. No, sir; it is all eastbound.

Q. All eastbound?

A. Yes, sir.

Q. You mean right at the present moment it is eastbound?

A. It is all eastbound. There are no shipments on the Salt Lake except between Denver and Craig and Orestod. When the crude oil is moving it moves over the Denver & Rio Grande Western from Denver and Orestod and then moves east over the Salt Lake.

Q. What is it, eastbound to Bond?

A. Eastbound to Orestod and westbound from Orestod.

Q. Yes.

A. The oil comes in the same direction as their loaded coal. All their business is eastbound.

Q. Well, I think we are probably talking about the same thing but expressing it differently. The oil does move to Utah, doesn't it, the petroleum oil?

A. Yes, but it moves eastbound over the Denver & Salt Lake, which is in the same direction as their eastbound coal movement. My statement was that if the Salt Lake could [fol. 1199] get lucky and handle business westbound they could handle four million or four and a half million and not only not increase their unit cost but decrease it materially, because they would get a balanced business, but they handle nothing westbound, practically speaking, except empties, and all their loaded is eastbound.

Q. I see. Well, what would you say would be the largest amount of gross that the Salt Lake could handle without increasing the 1940 unit cost?

A. That would be just a guess. The unit costs——

Q. Three and a half million?

A. The unit costs in 1940 will go down some, in my opinion, up to about two million eight to three, and from three on, because they would be running out of power, why, then, they would start having the unit costs go up because they would throw back into service a lot of small power and they would have to put on a lot of equipment or additional power if they are to keep the traffic moving.

Q. To the same extent as the Denver & Rio Grande Western?

A. To a greater extent than the Denver & Rio Grande Western.

Mr. Anderson: You have got full orders, haven't you, Mr. Anderson?

The Witness: Right now, I am talking about. Yes, we are in good shape, but right now I am talking about.

Mr. Clay: That is all I have.

[fol. 1200] Exam. Boyden: Any further cross-examination?

Redirect examination.

By Mr. Anderson:

Q. Mr. Bradford, there i sa question of power. Mr. Clay asked you if, with your present power, there would not be an increased cost of $30,000,000. You said there might be. Now, you have already ordered and have now in process of delivery or promised delivery this year additional power which you described this morning; haven't you?

A. Yes, sir.

Q. Costing approximately $4,000,000?

A. That is correct.

Q. Including 15 Diesel switch engines and three, I think it was, heavy 5,400 horsepower road Diesel engines for freight service; have you not?

A. Yes, sir.

Q. Now, with that new power can't you really handle the business that you are handling now, tonnage, at a lower unit cost, for instance, with Diesels than you can do it with this other stuff?

A. Yes, sir.

Q. You can reduce your unit cost?

A. Yes, sir.

Q. And with that additional power in service you could handle thirty millions or very considerably over thirty millions without any increased unit costs; couldn't you?

[fol. 1201] A. I think so, yes.

Q. As a matter of fact, can you see in prospective any business that the Denver & Rio Grande could not handle with its present power plus this new power of an improved character, plus central traffic control and other improvements you have made at a continually decreasing cost, unit cost?

A. I wouldn't use the words "continually decreasing," because we are going to run out of slack some time, but certainly with our new power and with our improvements we can handle increased business, and for the first few points

of increase at least we will get a decreased cost. In other words, we will have more power after this new power is delivered. We will have some surplus high class power.

Q. You will have more efficient power.

A. Yes, sir.

For example, at the present time we are making about—I will show you the—we are making—in the year 1940 we made 30.39 per cent of our locomotive miles with Mallet. That is our most efficient engine. In 1939 we made 29.8. Going back to 1936, we made only 18 per cent with Mallets. Now, the additional Mallets we are buying, plus the additional big Diesels, will further retire from operation some of this smaller power and, naturally, we expect to get a decreased unit cost with it. That is the only reason that we are buying it.

[fol. 1202] Q. And the Diesels, according to the testimony, on the Santa Fe and other roads indicate a very decided efficiency and reduced cost, do they not?

A. Yes, sir.

Q. Therefore, you can handle your business more efficiently and more economically with your power now at hand and within any reasonable limits of increase; can't you?

A. Yes, sir, I think so.

Q. Now, you were asked about the question of the ICC formula. Not being an accountant, I wouldn't imagine you would want to testify on the ICC formula, but at the same time, as you understand, those exhibits that have been a matter of discussion here were made up in strict accordance with the ICC formula; were they not?

A. Yes, sir, I understand.

Q. Now, the ICC formula, as I understand, distributes first the cost directly attributable to passenger and allied services to passenger and allied services; is that true?

A. That is my understanding.

Q. And the cost directly attributable to freight services to freight services?

A. Yes, sir.

Q. And then the common cost in between which they distribute on a basis determined by the ICC to be approximately correct or be reasonably near as they can make it, they [fol. 1203] distribute it between passenger and freight; isn't that true?

A. That is correct.

Q. And the distribution has been made in accordance with that formula here of that different cost. But, of course, you can't make an actual absolute distribution, for instance, of superintendence; can you?

A. No, sir.

Q. And you say even if you cut off the business the chances are you can't get rid of any superintendence; can you?

A. No, sir.

Q. And if you cut it off you can't make an absolute and mathematical distribution of maintenance where passenger and freight trains run on the same road; can you?

A. No, sir.

Q. Therefore, you take the formula that the ICC has developed as the best available and you make the distribution on that basis, don't you, when you make up these figures?

A. Yes, sir; that is the way those figures were made.

Q. You were asked something about the use of the year 1940 of unit costs and these were—the year 1940 was used, was it not, for the purpose of—no; put it this way: Was used as being the last year available in which the results or benefits derived from the improvements made on these properties show their largest manifestation? Isn't that about the way it was?

[fol. 1204] A. Yes; that is the reason I assumed that 1940 was used; yes, sir.

Q. In other words, you couldn't have gotten the benefit of these improvements as completely in 1939 or '38 as you did in '40 because many improvements were made in '38 or '39?

A. We were told to take the last available year, so that was the last available year.

Q. So naturally that showed greater improvements than had been made up to that time; didn't it?

A. Yes, sir.

Q. Now, you were asked if that would apply to the Denver & Rio Grande Western and the Denver & Salt Lake. Both of them were improved up to 1940 and improvements are continuing; aren't they?

A. Yes, sir.

Q. In other words, improvement of the track on which the Denver & Rio Grande Western operates over the D. & S. L. benefits, to the extent that the D. & S. L. trains are moved

over that track, the separate operation of the D. & S. L. also; doesn't it?

A. Yes, sir.

Q. Of course.

Now, can you think of any better year to have used to show the results; as far as you could do it, of these improvements and betterments either on the D. & S. L. or the [fol. 1205] D. & R. G. W.?

A. No. If the intent of that statement was to show the benefits of the improvements that were made in the previous years, of course, we should do just what we were told to do, and that is take the last year available in which improvements were made.

Q. On both railroads?

A. On both railroads; that is right.

Q. If you want to take statements of that kind can you think of any better way to do it than use the same year for both roads? If so, I would like to know it.

A. No; I think the only way you can do it is use the same year for both roads. Otherwise you will get into difficulty, because we have been getting a swing from year to year, particularly on the Denver & Salt Lake.

Q. You have a swing on all railroads; don't you?

A. Yes, sir, but the Denver & Salt Lake, their operation and their revenue is a pretty good thermometer.

Q. Of what?

A. Of weather conditions and things like that. In other words, if the Denevr & Salt Lake thermometer goes up you can figure you have had a heavy winter, and vice versa.

Q. What kind of a winter did you have in 1939 and 1940?

A. The spring of 1940 was pretty severe and we sold a lot of coal. 1941 was pretty mild.

[fol. 1206] Q. 1940 was a fairly tough year; wasn't it?

A. Fairly tough spring out there and a pretty good fall.

Q. Now, I ask you, is it not a fact that your reported earning statements during these years of improvement by the trustees are materially distorted by extraordinary maintenance and other charges which, I think, one year went up as high as 46 per cent of your gross revenue? That would be necessary during an improvement program; would it not?

A. Yes, sir. Our reported earnings during that period carry a considerable charge as a result of our improvement program.

Q. The reported net, for instance, is not any indication unless adjusted in the earnings of the road?

A. I think that is a fair statement.

Q. In other words, taking your unit costs after the improvements are finished in 1940 and carrying it back over those years, as well as carrying it forward for a prospective basis is a better approximation of the earning power of the properties than to take a distorted statement taken from the reported earnings of the companies; isn't that true?

A. I think so.

* * * * * * *

[fol. 1207] STIPULATION AS TO RECORD

Mr. Marsh: May I ask are the installments of the printed record still pouring into this record?

Exam. Boyden: Mr. Marsh, I think probably before the close of this hearing we will try to get a stipulation with respect to that and make it clear. As a matter of fact, we might as well do that now while the question is before us to save going back to it.

Are counsel willing to stipulate that the Commission may consider, as a part of this record, all of the court papers transmitted to the Commission by the Clerk of the Court to file in the docket?

Mr. Clay: Perfectly satisfactory to us.

Mr. Marsh: Satisfactory to us.

Exam. Boyden: Is there any objection? And when I say "all the court papers" I intend the stipulation to cover papers that are sent to the Commission and filed in the docket after the close of the hearing, up to the date of the issuance of the final order by the Commission.

Mr. Clay: May I ask what the Commission gets? They get the printed court record; do they?

[fol. 1208] Exam. Boyden: Yes.

Mr. Clay: Do they get the monthly earnings and the financial statement?

Mr. Gibson: They are printed in the court record.

Mr. Clay: Are they always printed?

Mr. Gibson: Always.

Mr. Clay: I see.

Mr. Anderson: Is that all that the Commission receives? Because I think the official court records are part of the

record in this case, and I am certainly not disposed to raise any technical question on the subject of it. If they were to send in papers, statistics, or anything of that kind, then, I think we might be in a different position. We would at least want to answer those statistics or cross examine them. Papers that go into the court records out there, we get those, but if they are sent into the Commission, court records, we don't, so it might put us in an awkward position. Is it court records that are printed and transmitted to this Commission?

Exam. Boyden: That is the way I get it, court records printed and transmitted to the Commission and filed in the docket.

Mr. Anderson: I have no objection to that going in the record, sir.

Exam. Boyden: I hear no objection.

[fol. 1209] WITNESS, T. A. THOMPSON

I hand you a statement which is entitled "The Denver & Rio Grande Western Railroad Company—Comparative Statement of Revenue Traffic Shown in Tons—Years 1920 to 1940, Both Inclusive," and I ask you whether that isn't merely an extention including the—whether that isn't the same as an exhibit which was introduced at the court hearing last August, except that it does show the 1940 figures?

A. That is correct.

Q. Otherwise, it is the same as RFC court Exhibit No. 1?

A. It is.

Q. This was prepared by you or under your direction?

A. It was.

Mr. Clay: Mark this Exhibit No. —.

Exam. Boyden: 272.

Mr. Clay: —272, and I offer it in evidence.

(Exhibit No. 272, Witness Thompson, marked for identification.)

By Mr. Clay:

Q. Will you comment on Exhibit 272 briefly? Does it now [fol. 1210] show that in 1940 there was a larger percentage

of the total revenue of traffic which was bridge traffic than in 1939?

A. It shows the larger tonnage of bridge traffic in the 21 years covered by the report.

Q. That is, in 1940 there was a larger percentage of bridge traffic than in any year in the last 20 years?

A. In the last 21 years; yes, sir.

Q. Well, that would seem to be merely an extension of the trend over this span of years?

A. It certainly indicates the trend.

Q. The trend, then, would seem to be over the long term an increasingly large percentage of bridge traffic and conversely a decreasing percentage of local traffic?

A. That is approximately correct.

Q. Now, at the court hearing last summer RFC offered an exhibit which is marked as Court Exhibit No. 10 which showed the freight revenue interchanged at Denver and at Pueblo, the two eastern gateways, for the years '37, '38 and '39.

I hand you now a statement entitled "The Denver & Rio Grande Western Railroad Company—Cars and Revenue of Freight Traffic Interchanged with Eastern Connections at Denver and Pueblo Gateways Received from and Delivered to the Southern Pacific at Ogden, Union Pacific at Provo, Salt Lake City and Ogden, and Western Pacific at [fol. 1211] Salt Lake City, Years 1937-1938-1939 and 1940.

I ask you if that was prepared by you or under your direction?

A. It was.

Q. The figures on the exhibit are correct, in accordance with the books of the trustees?

A. They are.

Mr. Clay: — this exhibit, which consists of two sheets, as Exhibit No. 273 and offer it in evidence.

(Exhibit No. 273, Witness Thompson, marked for identification.)

By Mr. Clay:

Q. Mr. Thompson, how can that differ in the main from the court Exhibit No. 10 which was offered at the court hearing last summer? It shows the 1940 figures; doesn't it?

A. There was added the 1940 figures and there was added the carloads in addition to the thousand dollars revenue for each of the connections named.

Q. That is, it shows the results net only in dollars, as did the previous exhibit, but also in carloads?

A. That is correct.

Q. Have you any comments on that exhibit?

A. No. I think it is self explanatory except to state that it assumes 1937 to be a hundred per cent and shows the ratio to 1937 for the following years, both by the Denver [fol. 1212] gateway and by the Pueblo gateway.

Q. That is, 1937 was a base year?

A. A hundred per cent, yes.

Q. A hundred per cent for each of the succeeding years.

Mr. Clay: That is all I have of this witness.

Exam. Boyden: Any cross examination?

Cross-examination.

By Mr. Anderson:

Q. Mr. Thompson, let us go back to that cash statement you have. You say that you had at the beginning of this year or the end of last year $4,328,000 in cash and you estimate that you will have at the end of this year, 1941, how much in cash?

A. $3,027,000.

Q. In other words, that you are losing a million, three hundred thousand dollars. Where did it go?

A. Well, most of it has gone into new equipment.

Q. You mean in paying—that is, equipment, on the capital expenditures on the property?

A. That is correct.

Q. And didn't you have in that amount last year some special deposits which you have since paid out in the matter of labor, taxes, or something of that sort?

A. A very, very small amount in last year's figures. No more than normal since '38.

Q. I see here you have got an item of special deposits of [fol. 1213] $480,169 on December 31st, 1940. Now, has that been paid out?

A. Very little of it.

Q. Have you still got that on hand, in addition to the three million that you estimated free cash?

A. I can give you the amount as of March 31st. To the extent that it includes the Railroad Retirement Act and Carriers Taxing Act, why, we accumulate that quarterly and pay it, see.

Q. Yes, I see.

A. There was approximately $185,000 in the special deposits on account of the retirement act and the Unemployment Acts as of March 31st, and about $155,000 in deposits of proceeds from the sale of mortgaged property, and that is substantially the same amount as we had at the end of the year.

Q. But you had $460,000 at the beginning of the year?

A. I have a comparison here of the breakdown. In the comparative special deposits of March 31st there was $1,450,000, because it included a deposit with the Pennsylvania Company for purchase of equipment.

Q. How much did you say for equipment?

A. It was $834,000 on deposit for purchase of equipment under an equipment trust.

Q. When was that deposited?

A. February 1st. That was the date of that equipment [fol. 1214] trust, series F.

Q. Now, have you made any deposits, or in your cash estimate have you made any provision for the cash payments on account of the $4,000,000 of equipment that Mr. Bradford testified has been ordered?

A. That is contemplated in the cash forecast, yes, all of it.

Q. And your reduction in cash from last year to this year of a little over a million dollars is attributable, you say, in large measure to payments on account of equipment?

A. That is right.

Q. You only pay 10 per cent on equipment?

A. 25 per cent on most of it in some of the cases. In some cases 10 per cent——

Q. How much are you paying this year for equipment? I mean not—on new equipment. I am not talking about old equipment trusts or anything of that kind.

A. Including what has already been paid?

Q. No. I am talking about the new cash payments which you make this year for equipment include that $800,000 in your percentage of——

A. That $800,000 includes the proceeds of the sale of the equipment trust certificates, series F.

Q. You have to pay that—when was that carried into your cash statement proceeds of the sale of equipment trust?

[fol. 1215] A. That was taken into cash in February.

Q. In February?

A. Yes, sir.

Q. And you have got to pay out that $800,000 during this year?

A. In fact, it has been paid out now.

Q. It is borrowed, a great deal of it?

A. 25 per cent of it was put up from the trustees' cash and 75 per cent proceeds.

Q. 25 and 75?

A. Right.

Q. So there is $200,000 there you have got to pay out. What other payments have you got to make on account of purchase of equipment during this year?

A. $1,425,000.

Q. In cash?

A. Right.

Q. That is $1,600,000 odd thousand dollars, then, you have got to pay out in new cash investments this year as against an increase in cash of about $1,300,000; isn't that true?

A. I don't know if I understand your question.

Q. In other words, you are paying out over $1,600,000 of new cash, of cash for new investment and equipment made during the year.

A. Right.

[fol. 1216] Q. As against a decrease of——

A. A million three——

Q. —in the cash, so your payments on account of equipment more than cover your decrease in cash?

A. That is correct.

Q. Now, does your cash contemplate that the accounts payable will be less or more at the end of the year than they were?

A. It contemplates being current on your accounts payable.

Q. Just current. As a matter of fact, last summer you than it really was; didn't you? You missed it by $800,000——

A. That is correct.

Q. —in July? That would be the first of the year. How does your estimate of the first three months of this year compare with the actual cash you had on hand from operations, and so on?

A. I don't know.

Q. In other words, did your income exceed your estimate by a hundred thousand dollars the first three months of this year?

A. Approximately a hundred thousand dollars, yes.

Q. And you have no way of saying that your income will exceed your balances for the rest of the year in the same proportion or in a larger proportion?

A. No. Nor can I say it might not show less.

[fol. 1217] Q. Now, had you not bought the new equipment, your cash at the end of this year would have been considerably more than it was at the end of 1940, wouldn't it, even on your own estimate?

A. No question about that.

Exam. Boyden: Mr. Thompson, you said, I believe, that your Exhibit 271 contemplates this $4,000,000 worth of new equipment that the company has now on order?

The Witness: That is correct.

Exam. Boyden: What items on it represent payments on that?

The Witness: Vouchers equipment, new locomotives, a total of $972,000; new passenger equipment $450,000. Now, the boxcars are behind us prior to May. They were contemplated in April.

Exam. Boyden: They have been paid for?

The Witness: Been paid for.

Exam. Boyden: Well, how much did the boxcars cost?

The Witness: $1,700,000, of which we paid $340,000 in cash—$440,000 in cash.

Q. How much is your equipment depreciation?

A. At the present time?

Q. Yes, for this year. How much do you carry in the way of equipment depreciation in a situation where you elect that in cash but do not——

[fol. 1218] A. Yes, I can figure it up. In round figures $1,200,000.

Q. I made it $1,250,000, but you make it $1,200,000. Now your equipment maturities are about $525,000 a year; aren't they?

A. You mean our present maturities?
Q. Yes.
A. About $670,000.
Q. $670,000?
A. Right.
Q. Well, that would leave you something over $500,000 out of equipment depreciation in cash; wouldn't it?
A. Right.

Mr. Clay: May I just clear up one more thing? You speak of your equipment maturity. That doesn't include the maturities of the $4,000,000 of the equipment trust?
The Witness: No; doesn't include the contemplated maturities.

By Mr. Anderson:

Q. I am speaking of this year. Now, that would give you, we will say, six hundred odd thousand dollars from that source. Now, you have an earning of $3,027,000 estimated; haven't you?
A. Income available for interest you mean?
Q. Yes.
A. Yes, sir.
Q. That is around $3,700,000 that you have got there [fol. 1219] from those two sources.
Now you take off your equipment trust certificate interest, $138,000, that would leave you the rest on that rough estimate $3,620,000; wouldn't it?
A. Right.
Q. So that on that basis you would have $3,620,000 of cash at the end of this year even if you only realized the income which you have estimated on those figures; wouldn't you, on those statements?
A. Go back over that again, please.

Exam. Boyden: Let the reporter read it.

(Record read by the reporter.)

By Mr. Anderson:

Q. What I am trying to get at is where you get rid of that million odd dollars is that thing there and how you make up your cash statement. $1,300,000 isn't very much these days, but it is a little pickings in a railroad like this.

A. Well, without the figures in front of me I can't say what the balance of the improvement program is, but there is a considerable amount in it. Of course, the improvement program is set up here just in ordinary vouchers.

Q. But at best your estimate of a little over $3,000,000 cash this year is after paying your new equipment percentage and based upon the assumption that your income will not exceed the forecast which you have made for the year,——

[fol. 1220] A. That is correct.

Q. ——although it did exceed it by $100,000 in the first three months?

A. That is correct.

Mr. Anderson: All right.

Redirect examination.

By Mr. Clay:

Q. Mr. Thompson, these three new Diesel engines which are going to cost a half a million dollars each are going to be delivered in January and February, 1942. Will you have to pay out any cash payment against those in 1941?

A. Not in '41; no.

Q. You have not allowed any cash payment?

A. Nothing for the new Diesels. Part on the new locomotives but not on the Diesels.

Q. What cash payment will be required against that million and a half expenditure, do you think?

A. That is not determined yet. It will either be a 10 per cent down payment up to possibly 25 per cent. We haven't been told, or I don't know as anybody has been asked to quote on them.

Q. Do you know if you can sell privately equipment trusts just on a Diesel engine? Isn't there a pretty high risk of destruction?

A. Based on our own experience and the commitment we have now——

Q. I mean a road haul engine; not a switch engine.

[fol. 1221] A. I think they will take the paper on a road haul engine as quickly as they will on a switch engine.

Q. What other railroad in the United States is using Diesel equipment on road haul?

A. Santa Fe is the only one I know of.

Q. Do you know if they financed it by an equipment trust or through cash?

A. I don't know.

Q. Of course, if you don't finance it through private channels you have got only two alternatives, selling the equipment trust to the R. F. C. or financing it with cash.

A. I don't think there is any question but what they can sell the paper.

Q. This estimate, of course, doesn't include any of the cost of the——

A. Of the Diesels.

Q. Of the three Diesels?

A. Of the three Diesels, no.

Q. And, of course, if you don't finance it through the R. F. C. or sell the paper for the cash, it would make it a million and a half in 1942, wouldn't it?

A. That is obvious if we had to pay for it in cash; certainly.

Q. You estimate that in 1941 you will have $3,027,000 on hand at the end of 1941. Assuming the reorganization is effectuated as of that time and the reorganization expense, counting not only the allowance, but the fees of in- [fol. 1222] corporating the company and recording the new mortgages and qualifying the company in different states, amount to $1,000,000, that $3,027,000 would be reduced to $2,000,000. Do you think that will be enough working capital for the reorganized company?

A. $2,000,000?

Q. Yes.

A. Ample.

Q. Would you want to get along to start the new company with less than $2,000,000?

A. I don't know that I am the proper man to say, but my own opinion is we could start with less than $2,000,000.

Q. Now, in the last few days there has been some mention in the newspapers that the five brotherhoods are asking for, I believe, a 30-per cent wage increase. You have made no allowance for that——

A. None whatever.

Q. —in this cash forecast or——

A. Income forecast either.

Q. Income forecast or any forecast that was made? Do you think $750,000 is a sufficiently large capital fund for

the combined system, that is, if you have a plan that consolidates the Denver & Rio Grande Western?

A. I don't think I am qualified to answer that question, Mr. Clay.

Q. Well, in a normal year will your additions and betterments run over or under $750,000?

[fol. 1223]

Mr. Anderson: I think you would have to define a normal year because there isn't anybody——

By Mr. Clay:

Q. Well, take the year 1942 when there will be no extraordinary improvements, when there will be no additions and betterments of an extraordinary nature.

A. I am just not qualified to answer that question.

Q. I think it was testified this morning that the improvement program, so far as roadway is concerned, is completed and the only thing left is making out some deferred depreciation on equipment. Would you think $750,000 would be enough for 1941?

Mr. Anderson: The witness has said twice he wasn't qualified to answer the question.

By Mr. Clay:

Q. Well, based on your experience.

Exam. Boyden: What official of the company is qualified to answer?

Mr. Anderson: What did you say, sir?

Exam. Boyden: I would like to know what official of the company is qualified.

Mr. Anderson: I don't think any of them are.

Mr. Clay: I submit, Mr.——

Mr. Anderson: I don't think any of them can guess better than I can or you can.

Exam. Boyden: Can any of them guess any better than Mr. Thompson can?

[fol. 1224]

Mr. Anderson: I think plenty of them can answer the question as to what the requirements are better than Mr. Thompson.

Exam. Boyden: Let us have Mr. Thompson give the best answer he can.

A. It is my own judgment that the property will always require a capital fund of $750,000 to $1,000,000.

Q. At least that much?

A. Based on the present accounting regulations.

Mr. Clay: That is all. We have another witness——

By Mr. Anderson:

Q. You spoke of the—you were asked about the question of financing your equipment. Is it not a fact that the manufacturers themselves finance these Diesel engines on monthly payments in addition to R. F. C. and the banking houses generally?

A. That is absolutely correct. In fact, we were offered affair rate of interest on the Diesels we are now buying and made better deals with the bankers.

Mr. Anderson: That is all.

By Mr. FitzGibbon:

Q. Mr. Thompson, did you, by any chance, in this forecast include any possible increase in rates?

A. None whatever. I presume you mean on revenue. No.

Mr. Clay: May I ask just one question?

By Mr. Clay:

Q. Did you allow anything for reduction of the $5,000,000 of outstanding trustees' certificates?

A. Nothing.

[fol. 1225] By Mr. Clay:

Q. Mr. Thompson, the question was raised as to how much Denver & Salt Lake stock was released by the RFC. I will ask you to turn to your Exhibit No. 276, and that exhibit shows a figure representing the amount of such stock as of November 1, 1935, and the amount of such stock held by the RFC as of March 31, 1941.

A. I have it. It shows released, 3,651 shares.

Q. Yes, that is right. That is the correct amount; isn't it?

A. That is the correct amount.

Q. We accept that as the correct amount. That answers the question of the Examiner. We have not information as to how many other shares may be actually outstanding with the public and we have no basis of obtaining that, unless the trustees will furnish it.

A. I can give it, if you will take my word for it. There are 430 shares outstanding and 30 shares in the treasury of the Denver & Salt Lake unissued under the plan of December, 1927. 460 shares in addition to the 3,100 shares under the Boettcher stock recision.

Mr. Clay: That is all.

Exam. Boyden: Exhibits No. 260 to 278, inclusive, are received into the record.

[fol. 1226] IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR THE DISTRICT OF COLORADO, SITTING AT DENVER

No. 8669

In the Matter of the DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, Debtor

Excerpts from Final Hearing on Objections to Plan of Reorganization of Interstate Commerce Commission

(July 29 to August 12, 1940)

Be it Remembered that on, to wit, the 29th day of July, A. D. 1940, the same being one of the regular juridical days of the May, A. D. 1940, term of said court, this cause came on for trial before the Honorable J. Foster Symes, Judge of the District Court of the United States for the Judicial District of Colorado.

APPEARANCES:

Henry McAllister, Esq., for the Trustees of The Denver and Rio Grande Western Railroad Company.

Cass M. Herrington, Esq., and Curtis Heath, Esq., of the firm of Larkin, Rathbone & Perry, for the Central Hanover Bank and Trust Company, as Trustee.

Mason A. Lewis, Esq., of the firm of Lewis & Grant, and Arthur A. Gammell, Esq., and F. W. Wood, Esq., of the firm of Milbank, Tweed & Hope, for the Chase National Bank, as Trustee.

[fol. 1227] Ralph Hartzell, Esq., and John B. Marsh, Esq., of the firm of Mitchell, Taylor, Capron and Marsh, for City Bank Farmers Trust Company, as Trustee.

Messrs. Hodges, Vidal & Goree and Frank C. Nicodemus, Esq., for The Denver and Rio Grande Western Railroad Company, Debtor.

Erskine R. Myer, Esq., for the Trustee of the Denver and Salt Lake Western Railroad Company, Raymond L. Sauter, Esq., and the Moffat Tunnel Improvement District.

Robert G. Bosworth, Esq., of the firm of Pershing, Nye, Bosworth & Dick, and Thomas O'G. FitzGibbon, Esq., for the Guaranty Trust Company of New York, as Trustee.

Morrison Shafroth, Esq., of the firm of Grant, Shafroth & Toll, Henry W. Anderson, Esq., and George D. Gibson, Esq., of the firm of Hunton, Williams, Anderson, Gay & Moore, and Oscar R. Ewing, Esq., of the firm of Hughes, Richards, Hubbard and Ewing, for the Insurance Group Committee.

C. M. Clay, Esq., and Frederick E. Baukhages III, Esq., of Washington, D. C., and James A. Marsh, Esq., of Denver, Colorado, for the Reconstruction Finance Corporation.

Messrs. Gerald Hughes and Montgomery Dorsey, of the firm of Hughes & Dorsey, and W. A. W. Stewart, Esq., for the United States Trust Company of New York, as Trustee.

William L. Cohn, Esq., for the Untermyer Family Group.

James Quigg Newton, Jr., Esq., for the Ideal Corpora-
[fol. 1228] tion, C. Boettcher Investment Company, General Securities Company, and Charles Boettcher.

Thomas Keely, Esq., for the Western Pacific Railroad Corporation.

Byron G. Rogers, Esq., Attorney General, and James J. Patterson, Esq., Assistant Attorney General, for the Public Utilities Commission of Colorado.

Toll R. Ware, Esq., for Guy A. Thompson, Trustee of Missouri Pacific Railroad Company.

* * * * * * *

C. M. Lightburn, a witness called and sworn on behalf of the debtor, testified as follows:

Direct examination:

By Mr. Goree:

Mr. Anderson: In order that Court and counsel may be advised, I think it is my duty to state before the testimony begins that during the day I desire to ask leave of Court to file a motion, which I now make orally, to the effect that the Court dismiss this case, as provided it may do by the statute, because of the long delay in the prosecution of the case, and of the impracticability of obtaining a reorganization under Section 77 within a reasonable time, and [fol. 1229] permit the case, if the parties are so advised, to be brought in equity for the foreclosure of mortgages and the foreclosure of their contract rights. I am not proposing to argue that question at this time, nor shall I ask for a ruling of the Court on it until argument is made on the entire matter, but I think that the motion should be made at this stage to the end that the parties may be advised both in the presentation of their evidence and during the case.

The general grounds of the motion are that the bondholders of the property, not through any action of their own, because they did not come into court, but through the action of the debtor, have been deprived of any return upon their investment for a period of five years; that while it is recognized that under the decisions of the Supreme Court of the United States, the remedy of foreclosure may be suspended for a reasonable time, the security holders and creditors cannot be deprived of their contract rights indefinitely or denied their contract rights under the constitution. Therefore, as the plan before the Court for five years is wholly impracticable and will not be accepted by the security holders, and those whom I represent, it is our purpose to file a written motion to dismiss the proceeding and remove the injunction which now exists, and permit the creditors to proceed in accordance with their contract rights to enforce their respective liens in equity or proceed otherwise as they may be advised. I will file that motion later in the day.

The Court: It may be filed, Mr. Anderson.

[fol. 1230] Mr. Heath: Representing the Central Hanover Bank and Trust Company, as Trustee under the first mortgage of The Rio Grande Western Railroad Company and the first mortgage of The Rio Grande Junction Railway Company, we wish to join in that motion.

The Court: Decision will be reserved. You may proceed.

By Mr. Goree:

Q. Your name is C. M. Lightburn?

A. Yes, sir.

Q. You are Valuation Engineer for The Denver and Rio Grande Western Railroad?

A. I am.

Q. How long have you been connected with the Valuation Department of The Denver and Rio Grande Western Railroad?

A. Twenty-three years.

Q. In what capacities?

A. At first as Assistant Valuation Engineer. I have been Valuation Engineer since 1925.

Q. Have you prepared an estimate of the cost of reproduction of all properties of the debtor?

A. I have, with the exception of lands for transportation purposes, which is known as Interstate Commerce Commission Account No. 2.

Q. Tell us what consideration, if any, you gave to lands owned by the debtor.

A. I based my estimate of present value of lands on a joint reappraisal that we made with the representative of the Bureau of Valuation in 1937.

Q. Say whether you have prepared a statement showing the result of your study and work along this line.

A. I have.

(Thereupon a document was marked for identification as Objector's Exhibit 1.)

[fol. 1231] Q. I hand you paper which for identification has been marked Objector's Exhibit 1.

The Court: Do you offer this?

Mr. Goree: Not at this time, Your Honor. I will, after I have it explained.

Q. Now, tell us what that paper represents.

A. It first shows an estimate of cost of reproduction new

of units of property as of December, 1932, priced as of December, 1938. To this has been added the recorded cost of additions and betterments made during the period January 1, 1933, to December 31, 1938. Lands and rights, based upon the 1937 reappraisal, with net credit to Land Account for the period ending December 31, 1938, is then set forth. This credit is deducted from land values because of retirements in excess of land purchased prior to December 31, 1938. Next is included a computed value of equipment based upon the cost of reproduction less depreciation properly adjusted by additions and betterments to December 31, 1938.

Q. What was the starting point or basis for the beginning of your work, the results of which are shown by Debtor's Exhibit 1?

A. The work done in connection with the Interstate Commerce Commission under Section 19A of the Interstate Commerce Act commonly known as the Valuation Act.

Q. When was valuation work started on The Denver and Rio Grande Western Railroad under the Valuation Act?

A. In 1917.

Q. Tell us whether or not all this valuation was done on The Denver and Rio Grande Western after you came to it.

[fol. 1232] A. It was.

Q. Please tell us whether you are familiar with the manner in which all this work was done.

A. I am.

Q. Please tell us your connection, if any, with it.

A. I had direct charge of the valuation work from the very beginning. This included the time during which the inventory was made as well as all work subsequent thereto.

Q. Tell us how this work was done.

A. A joint inventory was made by representatives of the Bureau of Valuation and the carrier of all physical property, including road and equipment. Similarly a joint appraisal was made of all lands.

Q. Was the property of the debtor and its predecessor companies inventoried together, or were they divided up in any manner with the land?

A. The fixed physical properties, that is, lands, roadway, track, buildings, etc., was divided into valuation sections and subsections, and the inventory taken of the property in each section. Equipment was inventoried by classes for the entire system.

Q. Tell us what classifications, if any, were used in making this inventory of property of the debtor and its predecessor companies.

A. The property was inventoried according to the system of road and equipment accounts prescribed by the Interstate Commerce Commission.

Q. Taking first the road accounts, please tell us how the quantities were taken.

A. Cross-section parties were sent into the field to measure all gradings, bridges, trestles, culverts, rip-rap, ballast and other roadway quantities. Tie counts were made and [fol. 1233] weights of rail, kinds of frogs, switches, rails, etc. were recorded. Right-of-way fences, crossing signs, buildings, telegraph lines, signals, interlockers, and all other items of fixed physical property were measured or noted and recorded.

Q. Taking, now, the item of equipment, tell us, please, how the inventory of that item was made.

A. Representatives of the Bureau of Valuation and the carrier made a physical inspection and inventory of all equipment on the system, coordinating their observed data with the carrier's records. This was done by classes of equipment, that is, steam locomotives, freight train cars, passenger train cars, work equipment and miscellaneous equipment.

Q. Tell us just how the lands were handled in this inventory.

A. From maps previously submitted to the Bureau of Valuation by the carrier, the areas of all land parcels were determined and zones established. Lands of similar character and value were included in the same zone. A determination was then made of the unit values of similar adjacent lands, which was applied to the areas of the carrier's lands computed for each zone. The values for the zones were then assembled by valuation sections.

Q. Now, say whether or not values were then placed upon all these units of physical property.

A. They were.

Q. What was the valuation date of the debtor and its predecessor companies?

A. June 30, 1919, except for the Goshen Valley Railroad and The Denver and Salt Lake Western. These lines were built subsequent to the date of valuation.